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CIS

TIMBER SET-ASIDE PROGRAMS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
SECOND SESSION

ON

TIMBER SET-ASIDE PROGRAMS

HOT SPRINGS, ARK.—FEBRUARY 19, 1982

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE
92-923 O WASHINGTON : 1982

5721-10.

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TIMBER SET-ASIDE PROGRAMS

FRIDAY, FEBRUARY 19, 1982

U.S. Senate,
Committee on Small Business,
Hot Springs, Ark.

The committee met, in the Federal Building, Hot Springs, Ark., Hon. Dale Bumpers, acting chairman, presiding.

Present: Senator Bumpers.

Also present: Kimberly A. Elliott, professional staff member, and Alan L. Chvotkin, chief counsel, minority.

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator Bumpers. The committee will come to order. Today, the U.S. Small Business Committee continues it's oversight hearings on the Small Business Administration's programs, focusing on the implementation of the timber set-aside program. This program is one of five small business procurement assistance programs, and it is administered jointly by the U.S. Forest Service, which has the primary responsibility, and the Small Business Administration.

Earlier this month I asked the Small Business Committee to hold this hearing in Arkansas to get firsthand testimony from those who participate in, or are affected by, the timber set-aside program.

The Small Business Act establishes as a goal of this Nation the preservation and protection of small business. Prior to 1958, however, the Small Business Act limited SBA's procurement authority to only the purchase of goods by the Federal Government. An amendment to the act in 1958 extended SBA's authority to assure small business a "fair share" of the sale of objects by the Federal Government. And it was at that time that the small business timber set-aside was established.

There are almost one-half billion acres of commercial forest land in the United States. The timber set-aside program is designed to permit, under certain well-described circumstances, a preferential bidding opportunity for small businesses in the national forests.

For a business to qualify as a small business under this program, it must be primarily engaged in logging or the forest products industry; be independently owned and operated; not dominant in its field of operation; and, together with its affiliates, it must have more than 500 employees. It's my understanding that the size standard for the timber set-aside program has been one of the most reviewed and challenged. Yet, it has not changed since 1964.

In fact, during 1980 and 1981, the SBA conducted an extensive reevaluation of the timber size standards. In part because of a congressional ban on any administrative changes to the size standards, and with the change in administration, a final decision on the timber size standard was not made until November 1981. And at that time, SBA reaffirmed the 500 employee size standards.

Recently, the Small Business Administration and the Forest Service completed their update of the 5-year "base share" for each market area. This base share represents the actual sales to small business during the most recent 5-year period, and serves as the basis for triggering the individual set-aside sales within any given forest. The small business share for the Ouachita National Forest has been set at 60 percent.

The timber program has been successful in making large numbers, and relatively large dollar amounts, of timber available to small businesses. On a national basis, during 1981, 2,658 individual small business sales were made out of a total of 3,591 or 74 percent. The sales amounted to 5.6 billion board feet of saw timber with an estimated bid value of $1.26 billion.

Of the three national forests in Arkansas, the Ozarks, the Ouachita and the St. Francis, in fiscal year 1981, there were 131 sales that went to small businesses, with an estimated bid value of $30.6 million.

Despite these successes, the program has not been without its problems and its challenges. Concern has been expressed about the need for the program, its regulatory scheme, and its day-to-day implementation.

Unfortunately, the Senate Small Business Committee's last hearings on the timber program were held in May 1979. Many of these issues were raised at that time. I should note, however, that at that time I also requested that the committee come to Arkansas to learn about the program directly from the mills. While those hearings were approved, the Senate schedule simply prevented them from taking place.

At that May 1979 hearing, the committee reviewed a General Accounting Office report which raised questions about the implementation of the program, and of SBA's internal operations. GAO's specific critical findings of the timber set-aside program included: One, that companies with fewer than 100 employees benefited less from the program than firms with 100 to 500 employees; two, the program maintained a static allocation of timber to small and large firms; three, that SBA did not follow its regulations in setting the timber size standard; and four, that set-aside sales were of higher quality, and return less revenue than open unrestricted timber sales.

SBA submitted rebuttals to each of these points at these May hearings. While I believe those earlier charges have been put to rest, the committee would welcome new comments on these allegations, as well as any other aspects of this program which may deserve analysis.

Despite the existence of the SBA timber set-aside program, there is growing evidence to indicate that small business involvement in the forest products industry is declining, and that the degree of concentration and control of the industry by large firms is growing. Some consolidation in any industry is likely to occur. Nevertheless, the

Senate Small Business Committee is particularly concerned about the prospects for promoting a healthy, viable small business timber sector. The committee would also welcome witnesses' comments on ways to preserve these businesses.

In addition to the witnesses we've scheduled this morning, I intend to provide any member of this audience who wishes to comment on this timber program an opportunity to do so, within the limits of time.

In announcing this hearing, I requested that people call my Little Rock office to sign up in advance. I have the names of those who have done so, and will call them in the order they called in. In addition, if anybody else here is interested in commenting, please pass a note up to one of the staff members.

Now with that, I want to say I welcome all of you here this morning. I am pleased that we have as many people here that we have. I hope this hearing will be beneficial to all of us, and especially to the committee. And I also want to point out, in case there are people here who don't keep up with the Federal Register, that in the Federal Register of January 20, 1982, the Forest Service has proposed a whole series of specific changes to be made in the timber sales program. If you want to make a note of that, that's volume 47, No. 13, page 2886.[1] And I would urge all of you to look at that. You have until March 8 to express your comments on those proposed rule changes, and I hope you will do so.

We are also honored to have the junior Senator with us this morning. Senator Pryor, as you all know, is on the Agriculture Committee and makes a great contribution to that. And it is the Agriculture Committee really, as much or maybe more so than the Small Business Committee, which has jurisdiction over the national forest. He has a deep and abiding interest in this part of this program. As a member of the Agriculture Committee and an interested Senator from Arkansas, he is here this morning and will be our first witness. Senator Pryor.

STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Senator Bumpers and ladies and gentlemen, I deeply appreciate this opportunity this morning to participate in this Senate Small Business Committee timber set-aside hearing in Hot Springs, Ark. I'd like to compliment Senator Bumpers and the Senate Small Business Committee and its staff for bringing this field hearing to our State. Arkansas is often, as we know, called the Land of Opportunity, and for agricultural purposes, such as our forests, this is, I think, a very proper statement.

Agriculture and timber sources have always been a mainstay in the Arkansas economy, providing billions of dollars directly from production and other billions from indirect or service-related industries. Over the years the ability of rural Americans and rural Arkansans, to be exact, to survive has depended on our ingenuity and our willingness to accept changes in traits which have allowed us to compete and harvest more and to become more creative in the marketplace.

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[1] See Appendix for Notice of Proposed Policy, Forest Service, USDA, p. 226.

Arkansas forests consist of approximately 18.2 million acres, or about 55 percent of the total land area of the State. And as Senator Bumpers has pointed out several of those figures which relate to the national situation, I hope for a moment I might look at the State of Arkansas. Almost all the forests in Arkansas are classified as commercial forests or land that is available and suitable for growing continuous crops of saw logs or other industrial wood products. Only about 71,000 acres of forest land would be classified today as noncommercial because these acres are in holdings withheld from timber harvest.

Direct employment in the timber industry in 1972 was almost 49,000 people. This was 23.8 percent of all manufacturing workers and 6.5 percent of all workers in our State. In addition, more than 123,000 people today depend indirectly upon the forest products industry in our State for their jobs and their livelihood. So, our forest industry unquestionably is extremely critical to this area of Arkansas and to the State and to our economy and to our quality of life as a whole.

As with all of America, the sagging economy today has been extremely difficult for the forest industry and the small business lumberman, in particular. I think because of this climate it is now an excellent time to look at the SBA set-aside program and to see if it still meets with congressional intent or whether time and new conditions mandate that some fine tuning should be undertaken.

The timber set-aside program is based upon not an Arkansas policy but a national policy to assist and to promote small businesses in order to preserve free competitive enterprise and maintain and strengthen the overall economy of the United States.

In order to fulfill these particular responsibilities, SBA developed and sponsors the timber sales set-aside program. This program has been based upon two basic premises. First, smaller forest products businesses fail because of an inability to bid competitively with large firms for raw material; and second, larger firms within the industry could eliminate conceivably competition by acquiring the smaller competitors.

So, Mr. Chairman, I again appreciate very much the invitation to participate, for us to look at this present condition that we're faced with in this issue before us. I, like yourself, Mr. Chairman, look forward to hearing the testimony this morning and I am sure that we will be very well represented by qualified individuals on both sides of the issues, and that they will be certainly appreciated by those of our colleagues in Washington as they read the testimony at a later time.

Finally, Mr. Chairman, I would just like to hopefully express my belief that the facts today presented before this committee will better enable us and our colleagues in Washington and the Congress to make a correct and prudent and a fair judgment on the issue at point.

Mr. Chairman, I thank you very much for this opportunity.

Senator BUMPERS. Senator Pryor, thank you very much for that fine statement. I welcome you to join me in holding this hearing.

David, why don't you come up here and join me.

[Senator Pryor joins Senator Bumpers at bench.]

Senator BUMPERS. I would like to say that Senators Nickles and Boren of Oklahoma have a very strong interest in this matter. Unhappily, neither of them were able to be here today. Senator Nickles is the chairman of the Small Business Committee Government Procurement Subcommittee, and an active member of the Small Business Committee. Both expressed interest and regret that they can't attend. But they ask their statements be inserted into the record. Without objection, they will be made a part of this record.

[The prepared statements of Senators Nickles and Boren follow:]

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

I join in extending a welcome to the witnesses from the timber industry and the government agencies who are involved in the small business set-aside program in the Ouachita National Forest. It is unfortunate that problems involving competing interests in the forest have not been resolved.

I compliment Senator Bumpers for his work planning this much needed hearing. I intend to work with my colleague, whom I serve with on the Small Business Committee, to help determine a solution to this issue which has lasted for several years.

Before us today are representatives from the agencies and businesses involved with the Ouachita timber set-aside program. Collectively, we should be able to find a middle ground from which to find some answers.

It very well may be that we are applying regulations to the Ouachita set-aside program that are more appropriately applied in other forests. If, as a result of this learning, we find this to be the case, perhaps some regulatory changes can be made that properly reflect the unique circumstances of the Ouachita National Forest.

STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator Bumpers, I want to take this opportunity to thank you for taking the time to conduct this hearing on the small business set-aside program on sales of federally owned timber. I think it is especially helpful that you have convened this hearing in Hot Springs, so that we will be able to hear more conveniently and directly from those saw-mill operators who operate under this set-aside program.

As you know, the small business set-aside program for timber sales was originally established to preserve and protect small mill operators who operate in our national forests. The program, as established, is a good program if it operates as intended by Congress and if enforcement of its provisions is carried out in an orderly and timely fashion.

However, we have been made aware of problems in the oversight and enforcement of the set-aside program, particularly as it relates to the 70–30 rule and particularly as it relates to enforcement in the Ouachita National Forest.

We have been told by our sawmill operators that it is difficult, if not impossible, to enforce the 70–30 rule, which is supposed to ensure that no more than 30 percent of the timber in a small business set-aside sale is sold to large business timber manufacturers. It has been proposed that the 70–30 rule be abolished in the Ouachita National Forest so that 100 percent of the timber from a small business set-aside sale would have to be sold to small business manufacturers.

We have also been told that small non manufacturers have been allowed to bid on these timber set-aside sales and have held their timber for speculation until the market price for timber makes it profitable to sell. This practice has given rise to overwhelming temptations to sell much more than 30 percent of this timber to large businesses. I believe this is particularly true since apparently, enforcement of the 70–30 rule has been so ineffective.

In light of these problems, I believe it is essential that the 70–30 rule be abolished and a 100-percent rule be placed into effect immediately so that we will no longer have these enforcement problems with the present regulation. We will hear evidence later in this hearing of the devastating effects that the present 70–30 rule has had on our small sawmill operators. The 70–30 rule has been impossible to correctly enforce. Unless we move immediately to implement a 100-percent rule, so that 100 percent of the timber in a set-aside sale must be sold to a small business manufacturer, I believe that we will soon see the day when there are no more small sawmill operators and only the large companies will be left to compete for federally-owned timber. I do not believe that we would want to see the demise of our small sawmill operators and we must act now to prevent such a result.

Mr. Chairman, these and other problems have been evident for several years in the Ouachita National Forest. After several years of meetings and negotiations between the SBA, the Forest Service, small mill operators, and members of Congress, I think it is past time that we attempt to reach a solution to these problems.

Once again, Senator Bumpers, I want to commend you for this hearing and your attempts to focus our attention on solutions to these problems. I pledge my support to you and the rest of the Senate Small Business Committee in working together to make this small business set-aside timber program operate in the manner that Congress intended so that our small businesses can continue to operate and compete effectively.

Senator BUMPERS. Our witness this morning—second witness this morning will be Joseph Kernan, Chief of the Natural Resources Sales, Assistance Branch of the Small Business Administration in Washington. Mr. Kernan, we're pleased to have you here this morning.

STATEMENT OF JOSEPH E. KERNAN, CHIEF, NATURAL RESOURCES SALES ASSISTANCE BRANCH, U.S. SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY PARKS WALKER, INDUSTRIAL AND FORESTRY SPECIALIST, AND BILL BERRY, FORESTRY SPECIALIST, SBA

Senator BUMPERS. Mr. Kernan, I'm not sure which one of those microphones is hooked up to the sound system. If you will pull it up pretty close so the people in the audience and Senator Pryor and I can hear you. Would you identify the gentlemen who are accompanying you, Mr. Kernan?

Mr. KERNAN. Yes. With your permission, Senator, I brought with me Mr. Parks Walker, industrial specialist, Forestry, with SBA. Mr. Bill Berry also a forestry specialist from our Atlanta regional office, who has cognizance over the program here in the Forest Service, region 8. Mr. Walker is from our Washington national office.

Senator BUMPERS. Fine. Go ahead.

Mr. KERNAN. Thank you, Mr. Chairman. I would like to express my appreciation for the opportunity to appear at this hearing to review the small business timber set-aside program, and to respond to your specific inquiries concerning this most successful program.

The Small Business Administration timber set-aside program is a national program administered jointly by SBA and the appropriate Federal agencies, primarily the U.S. Forest Service and the Bureau of Land Management, responsible for disposal of federally owned timber. In Arkansas, the Ozark and Ouachita National Forests administered by the Forest Service are of vital importance to many small businesses that purchase or use the federally owned timber offered for sale.

As a matter of general background, the small business timber set-aside program is embodied primarily in the 1966 and 1971 agreements between the Small Business Administration, the Department of the Interior, and the Department of Agriculture, respectively.

The current set-aside program has its roots in the Small Business Act. Specifically, SBA was directed to work with other agencies to insure that small business receives its fair proportion of the total sales of Government property. The present program of establishing set-asides does nothing more than allow small business bidding, if required, to insure small business the opportunity to obtain its historical fair share of Federal timber sold.

In 1958 SBA and the U.S. Forest Service established the mechanism for the first timber set-aside program. The program was administered, however, on an ad hoc basis. The U.S. Forest Service would reserve a timber sale solely for small business competition, only if a need could be factually demonstrated. This proof was often difficult to establish, as any evidence submitted could be rebutted by other interested parties who would not necessarily benefit from a set-aside.

With the decline in the number of timber purchases by small businesses and the increase in the number of acquisitions of small concerns by large companies, SBA reëxamined the set-aside program. SBA found the 1958 set-aside program to be ineffective to insure small business a fair proportion of national forest timber sales. The procedure for instituting a set-aside sale was cumbersome. The program had no definite guidelines for determining either when a timber set-aside was necessary or the volume of timber needed to be set aside. The present 1971 set-aside program modified the 1958 program in three very specific and important aspects: First, there is an historical approach for determining fair share; second, a 5-year time period is used for determining base average share of timber purchases; and third, a triggering mechanism is used for initiating set-asides based on current 6 month incremental purchases by large and small firms in each individual market area.

In the current program the fair share of Federal timber sales, designated the base average share, is the percentage of Government timber sales which have been awarded to small business in a previous 5-year period in a particular geographic area. The 5-year period is known as the base period. Since competition, manufacturing facilities, timber species, marketing characteristics, and many other variables necessitate a local approach in administering the program, the geographical unit for which base share and other tabulations are made is determined a market area. Usually this area coincides with a national forest.

For each market area, separate tabulations are compiled assigning the historical purchase of national forest timber sales during the base period to small companies. Once the total timber volume sold for a market area is known, the share of that volume, as expressed in board feet, going to small firms is computed as a percentage of the total saw timber volume. The computed percentage of timber sales which went to small business in the original 5-year base period of 1966 to 1970 was then used as a guide for the next 5-year period for the U.S. Forest Service to determine whether in fact small business was getting it's fair proportion. In early 1980 the fair proportion for small business was again recomputed for use during the 1981 to 1986 period.

Whenever in open bidding small business is not able to purchase up to 90 percent of the base average share in a particular market area during a 6-month period, then the next sale will be set aside for small business until the base average share is reached.

The 5-year base period revisions provide for flexibility and permit adjustment to reflect actual purchasing trends. The 50-percent floor of the 1966–70 base period insures that small business will receive a basic minimum proportion of national timber sales and in this way encourages their preservation and growth, contrary to the previous trends toward merger with or elimination by large firms.

The congressional mandate to protect and assist small businesses and to insure those small businesses a fair proportion of total Government property has been excluded following the above outlined, carefully devised, and repeatedly reviewed procedures. Even so, the SBA timber program has been subject to attack. The primary reason behind this increased activity appears to be in the success of the program and the growing desire of large business interests to gain control of the small business Federal timber sales share and to eliminate small business competition.

Two general methods used in the past to attach the set-aside timber sales program have been: First, to attempt to change the use of the purchase history. Key to the effective SBA program is the establishment on each national forest or marketing area of the computed, historically supported fair share for small business. Opponents of the program know that any other subjective method to determine fair share based on mill capacity, timber under contract, lumber production needs, economics of the industry, and so on, would lead to endless arguments on what the share would be. The set-aside program would be subject to continuous negotiation and delay would be endless. The simple factual system of using purchase history, however, makes the program practical and efficient.

The second method of attacking the program centers around the size standard. Opponents of the SBA set-aside program have concentrated their efforts on reducing the size standard. They know it would be near fatal to reduce the standard to less than 500 employees. In many parts of the Western and Southern States, significant numbers of small business mills fall within the 100 to 500 employee span. In the plywood industry, particularly where many of the mills are co-ops, close to 500 employees is not uncommon. Any reduction in the size standard would leave these employees vulnerable. But the best way to demonstrate the divisiveness of such an action is to assume the extreme position taken by some that the standard should be 100 employees. Not only would this exclude a great number of those firms now under the program, it would reduce the base shares to nearly zero percent in many areas because purchase history would continue to be used to determine the new shares. Any suggestion that the size standard be lowered appears to be contrary to the survival of small business.

In 1980, SBA conducted hearings on the timber size standards in Atlanta, Ga.; Sacramento, Calif.; and Seattle, Wash. Based on the hearings, the testimony and comments from the public, SBA recently confirmed the small business size standard for purchase of government owned timber as is a concern that is primarily engaged in the logging or forest products industry; is independently owned and operated; is not dominant in its field of operation; and together with its affiliates, its number of employees does not exceed 500 persons.

The present program of establishing set-asides does nothing more than allow small business preferential bidding, if required, to assure small business the opportunity to preferentially bid on its historical fair share of Federal timber sold. However, the intent of the program is to insure that set-aside sale sawtimber is primarily available to small business for processing. At the time the contract for the sale of Federal timber is executed, the selling agency requires the purchaser of a set-aside timber sale awarded under preferential bidding, to execute a certificate in which the purchaser agrees that if the timber is being purchased for resale, it will not sell more than the 30 percent, or in the case of Alaska where its 50 percent, of the preferential sawtimber to concerns that do not meet SBA's small-business-size standard; and that if the sawtimber is being purchased for manufacture, it will do so with it's own facilities or those of concerns that qualify as a small business.

SBA regulations provide for aid and assistance to both small business manufacturers and nonmanufacturers in the forest products industry. The 30-percent rule is needed and utilized by small business manufacturers and nonmanufacturers to give them the necessary flexibility to dispose of saw timber not normally processed by local business manufacturers.

The current success and close working relationship of the joint SBA, U.S. Forest Service, and Bureau of Land Management efforts can be measured by the share volume and price offered for federally owned sawtimber being captured by the small business industry, a circumstance which we believe would not exist without the protection of the set aside program. During calendar year 1981, the small business community received over 50 percent of the total volume of federally owned sawtimber awarded, representing in excess of 5.6 billion board feet of timber with an approximate $1.26 billion value to the U.S. Treasury.

In regard to the Ozark and Ouachita National Forests, the initial base shares reflected by the timber purchases during the 5-year period, 1966–70, was 94 percent and 77 percent, respectively. The current base share, computed on timber purchases during the period 1976 to 1980, is 47 percent for the Ozark and 60 percent for the Ouachita National Forest. Based on these recomputed shares, it is clear that purchases of timber sales by small business in these two forests have diminished. Small business forest products concerns in Arkansas and throughout the South are receiving severe pressure from large business concerns as well as feeling the serious impact of the downturn in housing starts that has affected the entire forest products industry. The resulting, declining shares disclaim any allegation that the allocation made for a 5-year period cannot be changed and that the system encourages small firms to buy excessive volume.

The positive aspects of the set-aside program can best be described by the program's success in maintaining a viable and a competitive forest products industry. Problem areas, while they do exist, are basically those of procedural interpretation or those that develop as the program matures and that would be classified as fine tuning. We are currently reviewing the overall set-aside program and are fully prepared to make adjustments to the program as may be required to further enhance the small business community.

In closing, I would like to emphasize that the SBA timber set-aside program has, in our opinion, been highly successful in serving the small business timber industry and has been instrumental in reducing the erosion of the small operators through acquisition by industry giants.

This concludes my prepared statement. I will be pleased with my colleagues to answer any questions that are raised.

Senator **Bumpers.** Mr. Kernan, one of the proposals made that was made to the Forest Service, but is not incorporated in the Federal Register, is a proposed changed to limit timber sales in this way: If somebody has what the forest service determined to be an excessive amount of timber sales over a 3-year contract period, they simply would not be an eligible bidder. Would you agree with that?

Mr. **Kernan.** I would question it.

Senator **Bumpers.** If somebody obviously has more timber with their present facility then they're going to be able to mill, should they be allowed to continue bidding?

Mr. **Kernan.** My opinion, Mr. Chairman, would be that this could result in such a subjective judgment that it would be a difficult interpretation to translate into regulation. I would tread very softly and very hesitantly as to being able to, on an ad hoc basis, draw the line on whether business A or business B could bid on a given set-aside. I would be reluctant to agree whole heartedly.

Senator **Bumpers.** You know, the Small Business Act was set up, as I said in my opening statement, to protect and preserve small business. Not only to protect and preserve small business but to keep them operating, therefore, keep people employed. Now, our job is to try to fulfill the mandate of the Small Business Act of 1958, and not to encourage speculation. It just occurs to me that we ought to—for example, one of the rules now, is it not, is that in the small business timber set-aside, the bidder is supposed to be, and I think you said in your statement, primarily engaged in logging and milling. Is that correct?

Mr. **Kernan.** In the forest products industry or in logging.

Senator **Bumpers.** Well, have you ever had a chance to monitor the forest service sales to be sure that that mandate is being carried out? That only people who are primarily engaged in that business are bidding?

Mr. **Kernan.** We have in fact received allegations and complaints from time to time through the years. They have not been all that numerous. We have made size determinations. We have conducted investigations. We've made reviews of situations. And yes, we have monitored to the extent that we have received indications that there is abuse in this area.

Senator **Bumpers.** How do you feel about the proposed rule on putting up a bond? I mean, I have received allegations from time to time that the bond is not a sufficient assurance that the timber is going to be taken. For example, if somebody bids on the timber and he's betting that 3 years from now or 2 years from now that the timber is going to be worth a lot more than it is now; but if it isn't, he can forfeit his bond and he hasn't really been hurt very much. What is your position—what is your attitude about that?

Mr. **Kernan.** I think that in the matter of the bonding, replacement of the bond with a—I presume you mean with some up front cash which is one of the proposals of the new regulations or changes to the forest service contracts. As an agency, we do not have the input of our small business constituency as to how they perceive this as affecting them in their ability to proceed with their business, especially in these very difficult times for the entire forest industry.

Senator BUMPERS. Mr. Kernan, there is another thing that troubles me. Under the rules now, a successful bidder, a successful small bidder can transfer as much as 30 percent of what he purchases to somebody with more than 500 employees that is not a small business. No. 1, I assume that there is no limit on how much he may sell to another small business. Is that true?

Mr. KERNAN. That is correct.

Senator BUMPERS. But he's limited to 30 percent if it's considered a large business under the rules. Now, in a place like the Ouachitas, for example, I understand that the bidding is pretty competitive among small businesses. I mean, Arkansas has a big timber industry in this State. We have a whole host of small industries. Now, if the bidding is competitive and there are a lot of small businesses competing for that 60 percent base share, do you think it would be appropriate to prohibit the sale of timber to larger firms?

Mr. KERNAN. No, I don't, Mr. Chairman.

Senator BUMPERS. What are your reasons?

Mr. KERNAN. I feel very strongly about it. My reasons are these. I believe that the small business who is subjected to pressures from every which way, should have the opportunity to make a considered business judgment, and should have the flexibility within a given sale as to the disposal of the saw timber and the proceeds of that sale, so that this business could most economically dispose of that sale to its own best interest. And I believe that it would be a step toward over regulation, in telling a man or a woman how to run his or her business, when we would say that, "you must sell all of this," or "you must dispose of all of this sale within your own facilities or with another small business."

Senator BUMPERS. Would that sort of defeat the purpose of the set-aside if you allow 30 percent of the timber to be sold to large businesses? I don't know if this is a prevalent practice in Arkansas and Oklahoma or not. I'm just curious about this.

Mr. KERNAN. Well, I believe that the opportunity to be able to dispose of certain kinds of species, certain kinds of the harvest elsewhere, to make the most economical use of the sale for the business' operation and well being. I think overrides the fact that it may appear to be somewhat at odds with the purpose of guaranteeing small business——

Senator BUMPERS. I understand your argument and it makes a lot of sense.

Mr. KERNAN. Those are my feelings on it, Mr. Chairman. I think it's the whole idea of flexibility so that the person can run the business in the most economical and profitable way. And further they might choke on some of the volume that they found it very difficult to dispose of by possibly limiting the marketplace for the disposition of this timber.

Senator BUMPERS. Senator Pryor?

Senator PRYOR. I have no questions at this time, but later in the hearing, I would if I could like to reserve a right, Mr. Chairman, to possibly bring him back and visit with you about a subject or two. I hope we could bring you back if we come across something that we need to know about it.

Mr. Kernan. I would appreciate it.

Senator Pryor. Subsequently, I'm saying. Thank you.

Senator Bumpers. Mr. Kernan, just a second. I can understand why a mill might bid on a tract that contained more timber really than he needed or really planned. He needs timber, we'll say. He needs the logs, but he didn't need quite as much as he's being asked to bid on. I can understand why he might bid a whole tract, betting that he can sell part of it that he isn't going to need. But he needs some of it, and he feels like this is the only way he's going to be able to make a purchase right now to keep his mill going. And I can also understand why there may be some species in there that he doesn't normally use that he would want to sell off to somebody else. But if a person who is not engaged, doesn't have a mill, is not engaged in the logging business, has absolutely no facility to utilize that timber that he's bidding on, and consistently sells 30 percent of what he bids to the larger interests, is there any penalty for him not taking all the timber? Let's assume that he only takes 30 percent of it and that has been sold to a larger firm. Is he penalized in any way?

Mr. Kernan. If I may, Mr. Chairman, I'm going to defer to my colleague on this contractural matter. You're speaking of a case where he defaults his contract?

Senator Bumpers. Well, he literally defaults because he only takes 30 percent of it. I would assume that this occurs occasionally.

Mr. Berry. Yes, it does. It would be more proper if the forest service would answer this question, but I'll give you the answer.

Senator Bumpers. Well, I'll ask them, too.

Mr. Berry. If a purchaser defaults on a contract, he then becomes liable for the purchase price upon the resale of that timber.

Senator Bumpers. But now as a practical matter, that's not enforced, is it?

Mr. Berry. Oh, yes, sir. But if the subsequent bid on the resale is higher than what he agreed to pay originally, then he in fact has no damages, even though he would have been liable for damages.

Senator Bumpers. Let's see, I'm just going to read this. I remember reading this yesterday. It says:

> In a normal situation, an uncompleted sale contract would go into default. The purchaser would be liable for the difference between the contract price and the resale price of the defaulted timber.

Mr. Berry. That's right.

Senator Bumpers. In other words, if you resale it though and it brings more than you bid, he's not liable for anything.

Mr. Berry. That's correct.

Senator Bumpers. It's only if the resale brings less than he bid.

Mr. Berry. That's correct.

Senator Bumper [reading].

> The specter of a large number of potential defaults followed by bankruptcies with all the consequent disruptive effects to employment and the economy in forest regions of the country, caused the Forest Service in October 1981 to permit, upon request, extensions of existing timber sales.

Well, I think everybody here is familiar with that extension. Gentlemen, thank you very much. I hope you will stay to honor Senator Pryor's request.

Mr. KERNAN. We will be here until the session is over. Thank you, Mr. Chairman.

Senator BUMPERS. Our next witness is Mr. George Leonard, Deputy Director, Timber Management, U.S. Forest Service, Department of Agriculture in Washington. Mr. Leonard. You are accompanied by Mr. John Orr, Forest Supervisor of the Ouachita National Forest.

Mr. LEONARD. That's correct, Mr. Chairman.

Senator BUMPERS. Fine.

STATEMENT OF GEORGE LEONARD, DEPUTY DIRECTOR, TIMBER MANAGEMENT STAFF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY JOHN ORR, FOREST SUPERVISOR, OUACHITA NATIONAL FOREST

Mr. LEONARD. Mr. Chairman, Senator Pryor, we appreciate the opportunity to appear before this committee and describe the Forest Service participation in the timber sale set-aside program. As has been described here already, the basis for the set-aside program is the declared policy of the Congress, as set forth in section 2 of the Small Business Act, to insure that a fair portion of the total sales of Government property be made to small business concerns.

This congressional policy has been implemented through a formal agreement between the Department of Agriculture and the Small Business Administration, which outlines the operation of the timber set-aside program. Operating instructions for the program are set forth in the Forest Service's administrative manual.

The Small Business Administration is responsible for defining which firms are eligible for participation in the program. They have defined small business firms in the timber industry as firms that are primarily engaged in logging or forest products industry; independently owned and operated, and not dominant in their field of operation; and which employ, together with their affiliates, not more than 500 employees.

For purposes of program administration, the national forests are divided into 152 market areas which generally coincide with national forest boundaries. For each market area, a small business share, the fair proportion provided by the act, is established by comparing the volume of saw timber purchased by small business to the total volume of saw timber sold in the marketing area for the preceding 5-year period. Small business shares now in effect are based on timber sale purchase records for 1976 through 1980. Small business shares are recalculated every 5 years. Under the USDA/SBA agreement, the Forest Service and SBA may agree to depart from the purchase history in establishing the small business share for a market area, but such departures have been very rare. Responsibility for calculation of the purchase history and the recomputation of shares lies with the local forest supervisor, John Orr in the case of Ouachita, and is subject to the concurrence of the Small Business Administration.

After the small business share has been established, the Forest supervisor keeps track of purchases by small and large firms for each 6-month period. A market area is triggered whenever there is an accumulated deficit of 10 percent of the small business share for the past 6-month period.

When a market area is triggered, the small business share for the current 6-month period plus the cumulative deficit from prior periods is set aside. That is, sales aggregating that amount are selected from among the sales to be scheduled and are designated for preferential bidding by small business firms.

The selection of sales to be set aside, once the program is triggered, is a joint responsibility. Ordinarily the forest supervisor recommends sales to be set aside from among the scheduled sales. He then submits a proposed list to the SBA field representative for review and concurrence. Our instructions on the selection of the sales to be set aside provide that the set-aside sales should be typical of the sales which are currently being offered on that national forest. If the forest supervisor and SBA representative fail to agree, the issue may be forwarded to the regional or Washington offices for resolution. The Secretary of Agriculture has the final authority to resolve the dispute regarding the set-aside of an individual sale.

When a sale has been designated as a set-aside, prospective bidders must self-certify their size status. That is, they must indicate that they meet the SBA specified size criteria and agree to sell not more than 30 percent of the timber included in the set-aside sale to large business. A firm's self-certification is accepted by the Forest Service unless it is challenged. If a firm's certification is challenged, SBA has the responsibility to make a size determination.

The Small Businesss Administration is also responsible for investigating allegations that manufacturing requirements on set-aside sales have been violated. If such allegations are substantiated, the Forest Service may suspend the sale operations or cancel the sale involved. If the violation is aggravated and the purchaser exhibits an unwillingness to abide by the rules, the violator may be debarred from purchasing national forest timber for a period of up to 3 years.

It appears that the administration of the program may be improved by some adjustments in the procedures prescribed by the current USDA/SBA agreement. As you know, the 1978 General Accounting Office report reached this conclusion. Ten years of operation of the timber set-aside program were completed at the end of 1980. Because of this, it seemed timely to have a review conducted to determine whether the program was meeting it's objectives. The Forest Service and the Small Business Administration have undertaken a joint review of the program. As part of this review, we are examining how the structure of the portions of the industry dependent upon national forest timber have changed over the decade. We are looking at various elements of the program to see if they are operating as intended. For example, our current instructions indicate that sales to be set-aside for small business should be typical of sale offerings for the market area. We are looking at how well we are achieving that objective and whether the objective is still appropriate. We are examining the questions raised in the GAO report. Currently, data collected for the study is being reviewed for accuracy, and the analysis phase will begin shortly. We anticipate completion of that review by late summer.

We have been concerned that the existing program does not seem to help the very small firms in the industry. Such firms may have as much trouble competing with the larger small business firms as they would with the giants of the industry. A special program of salvage sales has been initiated to help alleviate this problem. This program operates on small salvage sales funded through the salvage fund provided by the National Forest Management Act of 1976. And under this program, we set-aside sales, small salvage sales, for firms with 25 or fewer employees.

Mr. Chairman, this concludes my prepared statement, and I'll be happy to respond to any questions you may have.

Senator Bumpers. Mr. Leonard, let me just say as a prefacing remark that timber operators all over the United States, and particularly the small ones are in deep trouble. They're dropping like flies in Arkansas. And the people who make a reasonable contribution to their communities are having a very tough time.

Now, I'm not trying to protect inefficient operators. That's the way our system works. If you're not efficient, if you're a marginal operator, then maybe you ought to go by the boards. But there are some outside forces that are really working against you. Even if you are an efficient operator, if you just don't happen to be a wealthy operator, then it's tough to stay. Of course, that really causes me deep concern, and that's the reason we're here today.

Mr. Leonard. Yes, sir.

Senator Bumpers. One of the allegations that you heard me say to Mr. Kernan and that I continue to get, is that there are speculators who bid on this timber down here. I'm not here to judge the accuracy or the inaccuracy of that. I want to find out what I can about it. But I want to find out if there is any way we can help small operators through a real crisis period in this country. It may be just—it may be that a good portion of their problems is just related to the housing industry, the fact that it's such a basket case. But if there are violations of the rules, or if the rules need to be changed to help protect small business operators, then I want to do it.

Now, in connection with the allegation that speculators take this timber, who are not engaged in the logging business, don't have a mill one, don't intend to make 2 by 4, do you investigate it in Arkansas, or have you asked the Small Business Administration to investigate allegations of that nature here?

Mr. Leonard. Yes, sir. I'm aware of at least two investigations here in Arkansas, dealing with the Ouachita National Forest, on allegations that a particular purchaser was in violation of his contractural requirements because he had delivered more than 30 percent to big business. The two prior investigations were unable to substantiate those charges. We currently have requested Small Business to undertake a new investigation with regard to charges on a particular sale on the forest. And just within the last week another investigation has been initiated with regard to this on the Ouachita National Forest.

Senator Bumpers. Well, in that connection, of course, the allegation was also made that speculators sell more than 30 percent of their purchase to large firms. If that is true, if there is any merit to that at all, then we need to utilize these hearings to try to determine how you prevent this; so that some people who are not quite as well off as others, aren't put into a competitive disadvantage.

Now, there was a proposal to the Forest Service, which they rejected as one of the new rules. There was a proposal that the net worth present value of timber ought to be the criteria, and not what it may be worth 3 years from now. Now, obviously, one of the flaws in that is the Government is not likely to give top dollar for its timber. And I'm not opposed to speculation. People who play the stock market are speculating. So are people who buy securities. I mean, our system works on speculation. But here, as I say, if there is not enough disincentive to keep a speculator, who has no intention of doing anything except speculating, if there isn't enough disincentive in the way of a cash bond or a performance bond or something to keep him out, then there isn't any way really that you can enforce that very well, is there?

Mr. **Leonard**. The changes that you mentioned that we published in the Federal Register on January 20, are designed purposely to address the problem of speculative bidding. Both those people who are speculators in the sense that they really don't intend to operate the sale, and therefore, are just hoping that the market some day will get good enough that they can make a killing through disposal of the timber; and also an inflationary expectation which has been built in throughout the entire timber industry, that for the last 20 years lumber and plywood prices have generally out paced the economy in terms of the increase in prices. And therefore, if you bought a sale today that you didn't intend to market the products before 5 years, you could count on a 10-, 15-, or 20-percent increase in price each year; and therefore, you could bid 100 percent over the current value of that timber and make out.

And your earlier question to Mr. Kernan about defaults, we simply have not had a history of defaults in the last 20 years in the Forest Service. Individuals sales here and there or an individual purchaser; but probably one- or two-tenths of a percent, not even close to 1 percent of the sales are ever defaulted, because this inflationary economy continues to make timber of increasing value and people who bid unwisely get bailed out.

We are hopeful that the changes that we are proposing will bring that inflationary expectation out of the marketplace. Bid prices will be lower, but they will be prices that can be paid and those timber sales can be operated over a greater portion of the business cycle, rather than only at the peak periods of the housing market. We think that we can remove that inflationary expectation. We will also make it less likely that the true speculator, and we have a hard time sometimes defining who that guy is, but it's less likely that it will pay for him, because it will cost him to hold the timber under contract, and he's going to have to compete with people who intend to operate that timber, who will get it to the market at an earlier date and bring it out, therefore, at a discount.

Senator **Bumpers**. When timber and timber products were escalating in price so quickly, I can understand why people were bidding excessively on this timber. That's not so true any more. For example, they tell me that stumpage is as high as two by fours by the thousand.

And that just doesn't make a lot of sense to me. If it weren't for the bottom, I'd be going broke.

Mr. **Leonard**. Unfortunately, we've got a lot of stumpage under contract that's higher than the current price of two by fours, a lot higher, and that's a very serious problem.

Senator **Bumpers**. Well, that has to mean that there is still a great deal of speculation going on in this business, doesn't it?

Mr. **Leonard**. That's right. I think——

Senator **Bumpers**. I'm not saying that's evil or anything else. I'm just saying——

Mr. **Leonard**. I think that a good many of our timber purchasers say we're at the low point of the market. Things can't get much worse. They have some faith that the economy is going to recover. And as they look out 2, 3 or 4 years, they expect that there will be a recovery of the housing market; and therefore, lumber and plywood prices will respond, and therefore, justify a price that's certainly ridiculous by today's market standards.

Senator **Bumpers**. George, if I could just ask John a question. John, do you know just off the top of your head, what the average dollar bid was in the Ouachita last year?

Mr. **Orr**. I can give you a total dollar figure versus the value of the timber cut, Mr. Chairman.

Senator **Bumpers**. Well, give me that. That will be helpful. If you have any prepared fact sheets on the Quachita that you could submit for the record, that would be appreciated.

Mr. **Orr**. We cut timber valued at $13 million and we sold timber valued at $27 million. So, the price virtually doubled. That volume was not comparable. We didn't cut as much volume as we sold.

[Material follows:]

OUACHITA NATIONAL FOREST
Fiscal Year 1981

FACT SHEET

Administered by the Forest Service, U. S. Department of Agriculture, for multiple use and sustained yields of wood, water, wildlife, forage and recreation, the Ouachita National Forest is located in 12 west central Arkansas counties and 2 counties in southeast Oklahoma. The Forest Supervisor, headquartered in Hot Springs, directs the management, protection and development of these National Forest lands through 12 District Rangers located at Mena, Oden, Waldron, Booneville, Perryville, Mount Ida, Hot Springs, Danville and Glenwood, AR, and Idabel, Heavener and Talihina, OK.

Acres in Arkansas	1,337,485
Acres in Oklahoma	247,716
Total Acreage - Ouachita National Forest	1,585,201
Acres exchanged to improve efficiency and to reduce administrative costs	774
Acres of land purchased for National Forest purposes	200
Rights-of-way acquired	52
Land use permits issued:	
Rights-of-way	239
Utilities and communications	61
Water uses	38
Recreation uses	4
Agriculture uses	14
Community uses	18
Industrial uses	2
Public information	5
Research study	7
Miles of National Forest boundary line	4,475
Miles of land line posted to standard in FY 81	180

FY 81 NET RECEIPTS FROM SALE AND USE OF NATIONAL FOREST PRODUCTS

Timber	$6,007,562.98
Grazing	7,100.17
Land Use	28,318.76
Recreation	1,585.66
Powerline Licenses	7,237.51
Mineral Leases and Permits	331,914.04
Admission and User Fees	44,022.31
Total National Forest Funds	$6,427,741.43
Credit to timber purchasers building roads	3,392,731.54
KV funds used to improve timber sale areas	3,143,952.01
TOTAL NET RECEIPTS	$12,964,424.98

Under law, the Forest Service pays the State 25 percent of National Forest receipts to be used for public schools and roads in counties containing National Forest lands.

FY 81 PAYMENT TO STATE--25% OF NATIONAL FOREST RECEIPTS

County	Net NF Acreage	Amount Paid Act of 5/23/08
Garland	106,805	$ 218,563.40
Hot Spring	320	654.60
Howard	1,246	2,548.84
Logan	18,544	37,933.83
Montgomery	307,036	627,882.14
Perry	93,335	190,927.18
Pike	2,295	4,694.68
Polk	197,365	403,730.13
Saline	53,357	109,147.71
Scott	355,251	725,643.98
Sebastian	15,088	30,782.37
Yell	186,842	382,134.59
	AMOUNT PAID TO ARKANSAS	$2,734,643.45
LeFlore	204,555	418,249.89
McCurtain	43,161	88,212.92
	AMOUNT PAID TO OKLAHOMA	$ 506,462.81
	TOTAL OF OUACHITA NF 25% PAYMENTS	$3,241,106.26

TIMBER

The Forest Service advertises and sells timber (through sealed bids) to commercial operators, assuring that a fair proportion of the sales are offered to Small Business concerns.

VOLUME OFFERED FOR SALE	182,000 MBF
VOLUME HARVESTED	155,706 MBF*

*The timber harvested during FY 81 was from sales made in FY 78-81.

Each year, timber harvested from the National Forest generates millions of dollars for the economy of Arkansas and Oklahoma. This value includes the money paid to the Forest Service for standing timber plus the incomes derived from harvesting, transporting, manufacturing and marketing wood products.

Stumpage Value of Timber Offered for Sale	$27,053,474.45
Stumpage Value of Timber Cut	$13,631,806.00

The price for stumpage dropped considerably during July and August due to poor market conditions, though bidding remained active. Buyers harvested less timber than planned because of market conditions.

Reforestation and Timber Stand Improvement

	Acres
Planted	15,519
Seeded	3,734
Released	3,465
Pre-commercially Thinned	4,608
Site Preparation for Natural Regeneration	4,022
Site Preparation to Establish New Stands	13,120
Prescribed Burn for Control of Undesirable Species	1,990

As a public lands management agency, the Forest Service also responds directly to citizens' individual needs for wood resources. The Free Firewood Program gave free-use permits to 5,000 families this year. They removed 13,500 MBF of free firewood for home heating. The value of firewood cut on National Forest lands in west central Arkansas and southeast Oklahoma amounted to more than $75,000.

RECREATION

With virtually every acre of National Forest land open to public use, an increasing number of visitors seek and find a broad spectrum of outdoor recreation opportunities. These visitors and their activities bring thousands of dollars in business to local communities annually.

Recreation Visitor Days*

Arkansas	1,192,200
Oklahoma	360,300
TOTAL VISITOR DAYS	1,552,500

*A visitor day is 12 visitor hours of recreation use.

Recreation Facilities

	Developed Recreation Areas	Family Camping and Picnic Units
Arkansas	23	389
Oklahoma	9	166
TOTAL	32	555

Road resurfacing was completed at Charlton and Mill Creek Recreation Areas. New restroom facilities were constructed at Gap Creek and South Fourche

Recreation Areas. Work continued on an interpretive trail and new camping loop for single family and group use at Lake Sylvia Recreation Area.

Construction of the Ouachita National Recreation Trail has been completed. The trail extends 175 miles east-west across the Forest. Trail orientation exhibits were installed at the east and west entrances to the trail.

The first equestrian route on the Forest was established near Cedar Lake Recreation Area, permitting horseback riders to enjoy approximately 60 miles of the forest environment in southeast Oklahoma.

Mazarn Recreation Area was permanently closed to public use and all facilities removed from the site following repeated instances of vandalism.

Interpretive signs were installed on nature trails at Albert Pike, Crystal and Lake Sylvia Recreation Areas. The Lake Sylvia trail and signs will accommodate the handicapped (Braille and wheelchair), and other users as well. Orientation exhibits were placed at entrances to five major recreation areas.

All employees received intensive Host awareness training to improve public service in eight basic areas: person-to-person communication, use of telephone, correspondence, office operation, signs, office design and location, publications and mass media.

WILDERNESS

The Notice of Intent has been published for the preparation of the Draft Environmental Impact Statements on Belle Starr and Dry Creek Wilderness Study Areas. These Statements will be available for public review and comments.

WILDLIFE

Working closely with the State game and fish agencies, the Forest Service protects, manages and develops suitable habitat for a balance of wildlife and fish populations.

Habitat management is directed toward improvements which will disperse wildlife over more range and work which will improve or create forage:

Wildlife Habitat Improvements

	FY 1979	FY 1980	FY 1981
Water holes - structures	191	218	192
Vegetation Release - acres	3,965	2,971	3,045
Prescribed Burning - acres	16,020	15,777	11,821
Protection Fencing - miles	154	17	20
Wildlife Openings - acres	89	117	200
Wildlife Dens - structures	57	66	25
Seeding and Planting - acres	1,552	2,143	2,440

Visitor days of wildlife use on the Forest have declined by slightly over one percent since FY 80. This was due primarily to reduced big game hunting activities. Visitor days of fishing recreation increased slightly.

Visitor Days Use

	FY 1979	FY 1980	FY 1981
Fishing Use	280,100	270,400	273,200
Hunting Use	252,500	254,100	247,400
Big Game	104,700	103,500	104,200
Small Game	83,900	85,700	83,900
Waterfowl	13,100	13,200	12,600
Upland Birds	50,800	51,700	46,700

Big game populations and harvests, especially turkey, have decreased since FY 80. The decrease in estimated turkey populations is attributed to severe drought conditions during the summer of 1980. The extremely hot and dry weather during this period led to significant food shortages which caused increased turkey mortality and created poor reproductive conditions during the spring of 1981.

Big Game Population Estimates and Harvests

Deer

	FY 1979	FY 1980	FY 1981
Population	17,880	20,520	15,443
Harvest	1,600	1,497	1,302

Turkey

	FY 1979	FY 1980	FY 1981
Population	35,800	37,780	27,366
Harvest	2,640	3,573	2,726

MINERALS AND GEOLOGY PROGRAM

Renewed interest in the mineral wealth of the Ouachita National Forest is the result of recent national concerns over energy supplies and supplies of minerals critical to our national defense.

In the last year, the number of applications for seismic permits to explore for oil and gas is about four times the total number of permits issued by the Forest in the last eight years.

This increase in mineral activity is reflected in the returns to the U. S. Treasury:

FY 1979	FY 1980	FY 1981
$182,000	$240,000	$330,000

RANGE

Grazing of domestic livestock on National Forest land is coordinated with the needs of other resources and their uses. Last year, 139 permits were issued for 3,935 head of cattle on 89 grazing allotments. Work aimed at maintaining and improving the quality of forest rangelands included:

	FY 1981
Cattleguards	21
Acres of revegetation	174
Miles of fence	16.3

SOIL AND WATER

Protection of soil and water resources is an ongoing activity, with all uses of the forest keyed to the continued production of high quality water.

Collecting and analyzing 400 water samples from 43 different stations enabled the Forest Supervisor to monitor forest activities and ensure that water flowing from the Forest meets State Water Quality Standards.

Soil resource inventories were completed on 93,450 acres, to provide information needed to assess renewable resources as required by the Resources Planning Act and also provide information required for land management planning, land allocation, and resource management activities.

This year, 10 acres of soil resource improvement projects were completed.

ENGINEERING

Opening the Forest to business and pleasure, the Forest Service cooperates with public road agencies and private owners to develop, maintain and operate a network of roads. Approximately $850,000 are spent annually for maintenance of 100 bridges and over 5,800 miles of road.

Major FY 81 transportation projects included--

- --Participation in 12 projects with counties involving 11.4 miles of road.
- --Construction of 4 miles of trail.
- --Construction of 171 miles of specified roads under timber sales at a project cost of $5,683,727.
- --Awarded contracts for construction or reconstruction of 160 miles of road at a cost of $6,391,937.
- --Processed 102 cost share supplements with Weyerhaeuser Company involving 149 miles of road.

Other engineering accomplishments:

- --Energy conservation surveys on 99 buildings.
- --Retrofit action for energy conservation on 17 buildings.
- --Completion of swimming pool, warehouse and vocational building at Ouachita Civilian Conservation Center.

--Work on dispensary at Ouachita CCC.
--Completed Womble Work Center at Mount Ida.
--Began work on Womble Ranger District Office.

FIRE MANAGEMENT

A generally hot, moist summer resulted in a fire season of below average severity. Rainfall of 50.34 inches was near normal.

	Number of Acres Burned		
Number of Fires	NF Land	Private	Total
113	1,126	262	1,388

LAND AND RESOURCE MANAGEMENT PLANNING

Fiscal year 1981 began with the Regional Forester's approval of seven major public issues and management concerns. During the year planning effort was directed at the development of possible management prescriptions.

Possible management prescriptions represent ways of addressing issues and concerns. They address each issue and concern from at least two broadly differing perspectives, and sometimes from several intermediate perspectives as well.

A possible management prescription states goals which, if achieved, would eliminate an issue or concern. It lists the kinds of activities that must occur to reach the stated goal. And it also predicts the effects that may occur as these activities are carried out.

Predicting the quantities of outputs and listing the amounts of the hundreds of different activities necessary to produce them has been a slow, exacting process. Care and patience in this planning effort are leading to realistic alternatives for a productive National Forest.

HUMAN RESOURCE PROGRAMS

The Forest Service uses two major Human Resource Programs to serve the economically disadvantaged, minorities, youth, and the elderly through forestry activities:

Ouachita Civilian Conservation Center (Job Corps)

Job Corps offers disadvantaged young men the opportunity for training in vocational skills which will enable them to find work in jobs with a future, while also improving their educational skills in reading, math, world of work and health.

While accommodating 187 Corpsmen, 16 through 21 years of age, Ouachita CCC has constructed a variety of essential National Forest operating facilities. The enrollees receive training in welding, cooking, automotive repair, masonry, carpentry, plastering, painting and cement finishing. Instructors from the Labor Unions in the building trades play a major role in training and finding jobs for Corpsmen in carpentry, plastering, painting and cement finishing.

FY 1981 projects, valued at $768,837, included--

- --Construction of 52 flip-top grills, 21 pedestal grills, 61 lantern holders, 3 road closure gates, 1,225 aluminum corner monuments, and 12 cattleguards with wings.
- --Construction of 4,300 square feet of rock wall at Mount Ida Work Center.
- --Construction of 2 chemical toilet buildings.
- --Construction of concrete sidewalk system at Oden Ranger District.
- --Cement work consisting of 90 parking curbs, 144 picnic table seat supports, 72 picnic table base supports, 10 concrete patio tiles, 48 planter boxes and 24 bench seat legs.
- --Painting and repair of one staff residence, equipment storage shed, and gas and oil house. Painted exterior of Center kitchen and dining hall, exterior of vocational shop buildings, and stained exterior and interior of lodge building.
- --Continued construction of Ranger Office complex on Womble Ranger District.
- --Continued construction of Center dispensary building.
- --Constructed 4,400 square feet of drives and walkways on Center and built 4,000 square feet of sidewalks on Center.
- --Performed landscaping for Education Building, lodge area, dining hall, pool and gym area, dorm area, dispensary and administrative area.

Community involvement projects included--

- --Brick veneer work, stuccoing and painting of Piney Volunteer Fire Station.
- --440 pints of blood to Blood Bank (Ouachita CCC was No. 1 blood donor in Hot Springs).

The Center met and exeeeded all management objectives assigned by the Forest Service and Department of Labor. Twenty-eight Corpsmen completed requirements for the GED and 43 completed the Education Program. Corpsmen and staff completed 1,344 hours of fire presuppression training and logged 840 hours of forest fire fighting.

Senior Community Service Employment Program (SCSEP)

The Ouachita NF participated in the SCSEP Program, which is administered under Title V of the Older Americans Act. This cooperative program with the Department of Labor provides supplemental income, work experience and training to economically disadvantaged senior citizens. Enrollees receive personal and job-related counseling, supervision, yearly physical examinations, and in some cases, placement in regular unsubsidized jobs. In return, valuable conservation projects are completed on National Forest lands. Projects provide work experience in, but not limited to, construction, rehabilitation and maintenance of recreation areas, improvement and maintenance of trails, improvement of timber stands, wildlife habitat improvement, and clerical support.

At the close of FY 1981, 60 senior citizens were on the rolls, performing work on 12 Ranger Districts, the Job Corps Center and the Forest Supervisor's Office.

Senator **Bumpers**. Well, let's see. I think I can help you with that, John. As a matter of fact, in my opening statement here, we said that we had 131 small business sales in Arkansas last year with a total value of $30 million. Somebody, quickly, who has a pocket calculator, what does that come to on average? In any event, a $500,000 performance bond which the Forest Service is recommending under their new rules would seem to be more than adequate.

Mr. **Leonard**. It certainly would.

Senator **Bumpers**. I mean, you're not averaging $500,000 per sale.

Mr. **Orr**. No.

Mr. **Leonard**. Mr. Chairman, the increase in the level of the performance bond—we currently have set the amount of the performance bond at 10 percent of the bid value. We currently limit that to a maximum of 200——

Senator **Bumpers**. Is that a maximum figure then?

Mr. **Leonard**. A maximum of $200 000.

Senator **Bumpers**. That's the present rule.

Mr. **Leonard**. The present rule and what——

Senator **Bumpers**. Ten percent or $200,000, which ever is less. Is that right?

Mr. **Leonard**. Yes. Right. In other words, it's 10 percent of the bid value up to a maximum of $200,000.

Senator **Bumpers**. Now, they're proposing to raise that maximum.

Mr. **Leonard**. A maximum of $500 000. It will have almost no impact on these areas in the South because of the relatively small sales that we sell. It will be primarily of impact on the west coast where we have relatively large sales and extreme bidding.

Senator **Bumpers**. Now, George, you're also proposing a 5-percent cash bond, which has to be put up and is to be applied to the first timber taken. Is that correct?

Mr. **Leonard**. That's correct.

Senator **Bumpers**. What effect will that have on small business? Do you think that's a good thing or a bad thing for small business?

Mr. **Leonard**. Any change we make in the timber sale process that increases the cost will have a differential affect based on the ability of people to get money. It's a simple fact that big firms can have access to money at cheaper rates than small firms. However, we think that the changes that we are proposing are going to result in some changes in the way people operate. In other words, we think we'll get logging earlier during the life of the sale. Maybe in some cases some reduction in the total amount of timber held under contract. But if a purchaser gets out and starts operating on that sale, then we're really not increasing his cost of operating at all. It's only if he wants to buy that timber and sit on it and not do anything for 3 years, that he has a cost of carrying that money for that period of time.

The other thing is, we're reasonably sure that these changes in sale procedures are going to reduce the bid prices. And if this is true, then the man's total cost of operation, of putting that timber on the market over the period of the sale is going to be reduced. And he's going to be more competitive and he'll be able to operate over a greater portion of the business cycle.

Senator Bumpers. Well, I hope that turns out. I want the Government to be a competitive bid business. I've always believed strongly in that.

Senator Pryor. On this point, Mr. Leonard, those changes as proposed in the regulation in the Federal Register, is this the change that we're discussing?

Mr. Leonard. Yes, sir.

Senator Pryor. Would the review between SBA and the USDA that is ongoing now and that is going to be completed this summer that you mentioned on page 3 of your statement make major recommendations?

Mr. Leonard. I foresee, Senator Pryor, that the changes in the program will perhaps be in the nature of the fine tuning that was mentioned earlier. We are simply in the position of gathering data. We've some indications, for example, that the quality of sales that we select for set-asides may be higher than the average sale we sell. Our instructions say that they should be typical. We may need to look at the process we use to select those set-aside sales to get that change. We have some problems in the operation of the program in the noncompetitive areas. And we have a number of forests around the country where you have one small business mill in one town and big business mill in the other town, and those are the only two mills in the whole national forest. The set-aside program results in almost a direct allocation of timber, and in practice, it has a possibility of deciding which of those towns is going to survive. We don't think that the program, per se, is intended to have that kind of social effect.

Senator Pryor. How much credence will the review process that once again will ultimately result in, I assume, some recommendation in the summer, what sort of credence will you put in the GAO recommendations of 1978?

Mr. Leonard. Well, as you know, the GAO recommendations were highly controversial, and the only problem was, they used a fairly sophisticated statistical approach. A sample of forests, put it in a black box, and came out with some answers. We personally believe that many of those conclusions are reasonably valid. They were developed using an analysis procedure developed by a Forest Service scientist. I naturally think it's pretty good. But nevertheless, they are controversial and it's hard to sit down and say that this is the real result, because it's a sampling. There are obviously opportunities for errors, and as I said, the statistics involved were highly sophisticated and many of us can understand them a little bit but we really can't explain them.

So, what we're doing in this study is we're going and looking at every sale that we made over $2,000 in value during the last 10 year period; we're looking at who bought it; what was the size of that firm when they bought it; and we're looking not just at the 500 size standard but the 0 to 25, 25 to 100, 100 to 250. We're looking at who was buying our timber in 1960, 1970, and who is buying it in 1980. How did that industry change. We're looking at the characteristics of those individual sales. So, we're going from a 100-percent sample. We're eliminating the possibility that through the selection of the forest, you come in with a bias.

So, we think that the areas that we targeted—we used the GAO report to help us identify the things that we had to look for. We're going to rely largely on our own study, which we think will be much more straight forward and easier for people to understand, to design any changes that we would propose.

Senator **Bumpers**. We would like for you to share that analysis with us.

Mr. **Leonard**. We certainly will.

Senator **Bumpers**. There's a just one other question. Do you require a successful bidder to report any sales of that timber to a third party?

Mr. **Leonard**. In the West we have had that requirement for a long time, because of the log accountability requirements relative to log export. We have not had that requirement in the East. However, partly because of the concern about 30/70 violations in the South, and specifically on the Ouachita, a year ago we implemented a requirement on our contracts for set-aside timber sales that the purchaser respond every 6 months with a detailed identification of where he sold that timber, if he didn't process it in his own mill.

Now, we implemented that on new sales that we started to sell a year ago. To date, most of the sales have not yet been operated so, we don't have good detailed results of the reporting system. But the system is in place, and over the next 6 months to a year, and certainly within 2 years, we will be getting at 6 month intervals good data on where a purchaser of a set-aside sale has disposed of his timber. We intend to use that as a mechanism whereby both the Forest Service and SBA, through checking, can verify that that data is accurate. It will also be public information, if anybody else wants to come in and——

Senator **Bumpers**. That's the point I was really getting to, George. If that's made public, then if somebody wanted to challenge one of those sales, he'd have access to it.

Mr. **Leonard**. Yes.

Senator **Bumpers**. Right now, if a bidder is not required to tell you, and second, even if he were required, if the information is not made public, then small business wouldn't have a chance to challenge the sale. So, if that information is made public, it would be helpful.

Mr. **Leonard**. Yes. It would certainly be available in the supervisor's office for anybody who wanted to come in and review it.

Senator **Bumpers**. Without objection, I've got a summary here of all the timber sales from 1981 on the three forests in Arkansas by sale numbers, volume, board feet, and dollars, which I'm going to make a part of the record. George, John, thank you very much for coming.

[Subsequent information was received and follows:]

SUMMARY OF FOREST SERVICE TIMBER SALE AWARDS IN ARKANSAS (SALES OVER $2,000 IN VALUE)

FISCAL YEAR 1981

	NATIONAL FOREST			TOTAL
	Quachita	Ozark	St. Francis	
Total Sales Awarded				
1 Number of Sales	97	30	4	131
2 Volume (board feet)	95,245,000	19,648,000	1,217,000	116,110,000
3 Value (dollars)	26,649,380	3,841,734	154,326	30,645,440
4 Average Value/Mbf (3÷2)	279.80	195.53	126.81	263.93
5 Average Size Sale (board feet) (2÷1)	981,907	654,933	304,250	886,336
Sales Awarded to Large Business				
1 Number of Sales	35	15	-	50
2 Volume (board feet)	40,093,000	13,657,000	-	53,750,000
3 Value (dollars)	11,472,342	2,969,578	-	14,441,920
4 Average Value/Mbf (3÷2)	286.14	217.44		268.69
5 Average Size Sale (board feet) 2÷1)	1,145,514	910,467	-	1,075,000
Total Sales Awarded to Small Business				
1 Number of Sales	62	15	4	81
2 Volume (board feet)	55,152,000	5,991,000	1,217,000	62,360,000
3 Value (dollars)	15,177,038	872,156	154,376	16,203,520
4 Average Value/Mbf (3÷2)	275.19	145.58	126.81	259.84
5 Average Size Sale (board feet) (2÷1)	889,548	399,400	304,250	769,877

Senator BUMPERS. We next have a panel of witnesses, and I will call their names and ask them to testify in that order. Mr. Buddy Bean, Hatfield, Hatfield Lumber Co., Hatfield Ark.; Mr. Howard Cox, Big Pine Lumber Co., Waldron; Gene White Burnett Lumber Co., Heavener, Okla.; and Mr. Dale Rogers, Dale Rogers Lumber Co., in Mena. Gentlemen, welcome and thank you for coming this morning.

STATEMENT OF BUDDY BEAN, PRESIDENT, HATFIELD LUMBER CO., INC., HATFIELD, ARK.

Mr. BEAN. Senator Pryor, Senator Bumpers, my name is Buddy Bean, owner of Hatfield Lumber Co., Hatfield, Ark. I appreciate the opportunity to address you gentlemen and I have five items to read and go over with you concerning the 70/30 rule.

Is the SBA set-aside program all it is set out to be? It appears the set-aside program could become counterproductive. However, the intent and purpose of the program is good.

Item one, the system in operation. Theoretically, all U.S. Forest Services sales are open until big business purchases exceed 40 percent. After big business purchases exceed 40 percent, it triggers the set-aside program at which time small business has the priority of purchase. After small business has purchased a certain saw timber sale, only 30 percent of that timber can later be sold to big business. In theory, this is a good system.

Now, let's examine the standard procedure of the U.S. Forest Service. The U.S. Forest Service automatically charge timber sales to small business unless directed otherwise. This has historically been an erroneous presumption. The method delays the trigger system. The end result is that big business continues to get a larger share of the pie. It is a known fact that certain loggers buy considerable amounts of timber which is charged to small business, and that timber is never sold to small businesses. The timber sales charged to small businesses exceeds the entire production of small business. Also, most of small businesses or saw mills buy considerable amounts of timber from private owners. Therefore, when the set-aside program is triggered, there is considerable violation of the 70/30 clause.

Item two, the paramount problems. The U.S. Forest Service charges small business with timber sales that actually go to big business on a routine basis. There is no monitoring of the 70/30 clause, and SBA appears reluctant to investigate these allegations.

Item three, small business allocation. Now 60 percent of sawtimber is sold annually from the Ouachita National Forest under a set-aside program. The U.S. Forest Service has reduced the percentage of the sawtimber set-aside for small businesses for 77 percent to 70 percent, and now it is set at 60 percent. The effects are the following: They gradually reduce small businesses set-aside portion; small mills are closing; increases unfair competition from big businesses; large operators could price small operators out of the timber market.

Item four is the penalties. The penalty in the U.S. Forest Service contract is insignificant as a deterrent to violating the terms of the contract. There appears to be no penalty for big businesses purchasing what would be considered illegal purchases.

Item five, no bids by small business on some set-aside sales. The U.S. Forest Service gives big businesses the right to purchase nonbid set-aside sales, without ever determining as to why there were no bids by small business. These bids by big business actually reduce the amount going to small business in the long run.

In conclusion, small business cannot survive without a set-aside program. However, in it's present operation, I'm not sure it can survive with it. It appears only logical that if small businesses are eliminated, big business will practically have a monopoly on purchases of the U.S. Forest Service timber.

Senator, our forest here in the Ouachita is primarily a one species forest being pine. The only other species we have is a little bit of hard wood, which we all know that hard wood in the Ouachita goes to small cross tie mills. Big business does not use hard wood. So, there is no reason that 100 percent of the small business sales cannot go to small mills, since we use them any way.

We did ask for an audit 2 years ago. We got an oral audit. SBA or the Forest Service has no documentation as far as log tickets or scale tickets saying that they checked any sale that they came up here to check. So, we would hope that next week, if we have another audit, instead of being like the last one, an oral audit, which they admitted to us; we would like for them to engage in checking some log tickets, scale tickets or just anything. Thank you.

Senator BUMPERS. Buddy, thank you. Mr. Cox?

STATEMENT OF HOWARD J. COX, PRESIDENT, BIG PINE LUMBER CO., WALDRON, ARK.

Mr. COX. Mr. Chairman, Senator Pryor, ladies and gentlemen, I'm Howard Cox. I live at Waldron, Ark., and run the saw mill there. It's a pleasure to be here, and I do appreciate the opportunity to come before you. Our group has been to Washington, Atlanta, Hot Springs, many, many places, many times without problem; and of course, I'm not here to—I see some of my friends from small business. I see some from large business. I'm not on large business' case today. I have been a few times. That really isn't my purpose today. I'm after the timber broker.

The timber broker has muddied the water, run up the price, he spends all of his time speculating. He has no employees. There may be a banker or one or two timber chasers. He could operate out of my field office. He does not have 60 employees that he watched children grow up in Arkansas. Even now, when timber is in excess of $200 a 1,000, our No. 3 finished lumber is selling for $180, $185. You've still got between the harvest, you've got $70 or $80 to pay your loggers to get it to the mill.

These people that I have employed for years want to work worse than they ever wanted to work. They are better hands than they were 10 or 15 years ago, and it's very hard to keep them there. I'm still operating on a 4-day week. In fact, I operated on a 5 until it got so—production just got so far ahead of sales that it was necessary—I really shouldn't be operating at all, but I am proud of the people that has grew up with our little organization.

As I said, I'm not on big business' case. I'm concerned about the timber broker. The giants can go—might better get in line, because under these cases, if this lasts a long period of time, the giants can go bankrupt just like the smalls. The timber broker is doing nothing but purchasing this timber, putting up a bid deposit, putting up a bond, and sitting on it 3, 4, or 5 years, whatever the contract will permit, and inflation, market conditions permitting, to sell the timber to someone that was not as fortunate and bid for what the market would allow at the time the timber was sold. He never puts a dime into the timber. When he sells it, he gets the buyer's money and pays for the timber with the buyer's money. All he's been out, as I said before, is his bid deposit and his bond.

In running a small sawmill or a big business, it becomes necessary to plan your operation. You still have thousands, in many cases hundreds of thousands and even millions of dollars worth of machinery, trucks, logging equipment and so on. Heavy payroll, accounts receivable, and so on, accounts payable. And it is necessary that you plan your operation properly, and you act like a businessman and watch everything, and plan your timbering schedule. Just because you want to gamble and you think, "Well next year, timber is worth $300. This year it's worth $160", you cannot go out and gamble and plan on not going to Federal court.

But, you take the timber broker with his investment, an office, a timber bond—I'm trying to get straight to the point. I get a little nervous sometimes, but you know, this is something I've been coming to Washington, Atlanta, and Hot Springs about for quite a few years. And even if push come to shove, the way our present rules through the SBA are set up, and you did not permit the timber broker to sit on a sale, or he was cut off from bidding, all he's got to do is have mama, little sister, baby brother, or a good friend go in on the next sale and bid it in. Then he could bond it and we're back to where we were.

But anyway, my proposal is that the 30/70—if the 30/70 rule of big business being able to get 30 percent of an SBA sale and the small business retaining 70 percent, all we have to do to stop the timber broker and make people with manufacturing plants or treating plants or some legitimate business that employs people—or we can go the other way. Let the broker run wild. But whatever he buys—he's certainly a small business man because he certainly has less than 500 employees, if he wants to buy and still have to sell it all, instead of small business—instead of running up under the fence with about half of it or even two-thirds, for moving in on a sale, moving out 3 weeks later after he's worked a unit, hiding for a year because he's got the time element. No one can police him. It can all go to big business. And the small businessman is losing his timber just this way.

I could name a sale that's 13 miles from my sawmill right now that's been hit or miss for about 3 years. They run in and get a unit, then they all disappear. So, we've already forgot about them. The next thing we know, doggone, they've already come in there and worked another unit. But this is about the way that it's run. And quite frankly, to get back to the 30/70, if it's an SBA sale, no matter what small business buys it, he should have to sell it to some other SBA sawmill. And then the timber speculator has took care of himself, because they cannot pay what he intends to sell it to, whether it's the plywood mill, the paper company, or the particle board mill. Gentlemen, thank you.

[The prepared statement of Mr. Cox follows:]

STATEMENT BY
HOWARD J. COX, PRESIDENT
BIG PINE LUMBER COMPANY
WALDRON, ARKANSAS
SENATE SMALL BUSINESS COMMITTEE
HEARING ON SBA'S TIMBER SET-ASIDE PROGRAM
FEBRUARY 19, 1982
HOT SPRINGS, ARKANSAS

After many attempts to attract the attention of our lawmakers and public employees to the plight of the timber industry in the Ouachita National Forest of Arkansas and Oklahoma, we are delighted to present this testimony relating to the Small Business Administration's (SBA) Timber Set-Aside Program.

When the joint program between the U.S. Forest Service (USFS) and the SBA was established in 1958, the purpose was to insure that the Small Business sawmill operator would have a fair share of federally owned sawtimber to use in the production of lumber, ties, plywood, timbers and other forest-related products. In the beginning, there was little competition on the Ouachita against Big Business for raw material. But as Southern timber became more attractive to large companies, they began to build large and complex mills that consumed large amounts of our area forests. Not only did they draw on the National Forest for their supply, but devoured large acreages of private timber in addition to their own land holdings.

Thanks to the SBA Program, 60% of the timber sold on the Ouachita National Forest is still set-aside for the small sawmill. However, in the past ten years, at least six small mills have closed their doors. Most of these closings relate to the fact that there simply was not an adequate supply of timber available at a price that was profitable to operate. Consequently, there are many "ghost communities" that have been devastated by the loss of economic activity generated by these mills.

Obviously, there is still a problem that exists with the system. The small operators in this area have made numerous trips to Washington, Hot Springs and Atlanta, spent thousands of dollars and endured years of frustrating hardship to reach a point of total exasperation.

The simple reason for a decrease in the supply of available timber from the Forest and an increase in the price of that timber is the invasion of a useless middle man that we call the "timber speculator".

Timber speculation can (at this point) conceivably and legally be engaged in by any individual, corporation or entity. The process is simple: 1) A prospective speculator furnishes a bid deposit for amounts that range from $2,000. to $10,000. 2) A bid is then made that will insure the purchase of the advertised timber. 3) After successful bidding, the purchaser executes a contract that may range from one to five years in length of term. 4) At this point a performance bond is posted. 5) All a speculator does, then, is to wait until the market conditions make it favorable for him to sell the timber for a profit. The market becomes favorable when the lumber business is booming or a business is forced to buy from the speculator because they were not able to secure their own supply because of speculative competition.

It seems easy for anybody...anybody except the bona fide sawmill. A legitimate mill does not have the cash to tie up in these deposits, bonds and "the element of risk". Their money is invested in their sawmill machinery, employee payrolls and benefits, inventories and ongoing operations. The average small sawmill in this area employs from 40 to 100 persons, is located in a small town and is usually the major industry and sometimes the only industry. A sawmill operator is also discretionary about his timber purchases so that they will fit his budget, harvesting schedules and raw material requirements. This also aids the Forest Service with a consistent cash flow, prompt payments to the counties and school districts, and a reasonable plan of operations.

Unfortunately, the speculator could be nothing but a one-to-four man operation with nothing but an office and a bank account. This qualifies them to bid on Set-Aside sales since they don't have more than 500 employees. So, what was originally 60% Set-Aside for small business is now divided between sawmills and speculators. This not only increases competition which drives up prices, but forces small business to compete against big business on "open" sales.

This would all be fine if the speculator was required to sell all of the Small Business Timber to a small business.

But, because of a geographically rooted rule that allows them to sell 30% to large business, we are losing our SBA timber. It is understandable why a speculator would sell all he could get away with to big business, because large operations have historically paid more for their timber supply than small mills. This is related to the fact that they mix their timber---private purchases with that harvested from their own lands.

Small mills are just not buying enough timber from these speculators to account for 70% of the speculator's Set-Aside purchases. As businessmen, we do not have the time, money or authority to investigate each Set-Aside tract of timber to determine the ultimate fate of the timber. We have repeatedly asked the Forest Service to do this chore and we have been barraged with excuses, lipservice and basic inaction. We have gone to the Small Business Administration for help and they don't seem to be in a position, either, to help us out.

Even if the Forest Service or SBA were to find violations, there is not a penalty or punishment that would do much to restrain somebody from doing it again. If push came to shove, a speculator could simply have his wife bid on the next sale if he was disqualified.

So...we don't have any log tickets, stump prints, moving pictures or incriminating evidence to prove where our Set-Aside timber is being delivered. It is just simple arithmetic that shows that non-manufacturers are buying and reselling more SBA timber than has been delivered to the rightful owners....SMALL BUSINESS sawmills.

We sincerely believe that if the 30/70 Rule were abolished locally and that 100% Set-Aside sawtimber were required to go to small sawmills, the problem would alleviate itself if it was monitored and enforced by the Forest Service.

We welcome any comments, assistance and relief you can give us in this area.

Respectfully submitted,

Howard J Cox

Howard J. Cox

Senator BUMPERS. Mr. Cox, that's a very fine statement. Gene?

Mr. WHITE. Senator Bumpers, Senator Pryor, I appreciate the opportunity to be here. Before I begin my testimony, I'd just like to mention as a matter of record that Mr. Lindell Whitworth here from our Oklahoma Congressman, Wes Watkin's office. He would like to submit a statement to this before we close the books. Not today, but later if it's okay.

Senator BUMPERS. We will hold the record open for whatever length of time is necessary to get his statement.

[The prepared statement of Representative Watkins follows:]

Statement of the Honorable Wes Watkins
Before The
Senate Committee on Samll Business
Hot Springs, Arkansas
February 19, 1982

Mr. Chairman, my thanks to the committee for allowing this opportunity to express my concerns about the Samll Business Set-aside in the Quachita National Forest, and more particularly about the provision allowing thirty percent of the set-aside to be sold to big business concerns. My comments will be as concise as possible.

First, I would assert that Federal programs designed to assist the small business sector are well-intentioned efforts and generally have my support when the net result is positive to small business. I have strong faith in this sector of our national economy, and believe small businesses are an indispensable socio-economic element in America.

As to the Thirty/Seventy Rule, I have been trying to assist small mill operators in my Congressional District for several years now to win an exception to this well-intentioned rule. While this rule may serve a useful function in multi-species forests, it is frankly more disruptive than helpful to our smaller operators in this single-species forest.

As we are all aware, this rule was put in place largely to allow small operators in multi-species forests, who could process only one species, a permissible outlet for the other species included in the areas they acquire through the set-aside bidding procedure. And, for these people, I assume the rule is beneficial.

However, in our forest the rule is not beneficial; it is disruptive. It should not apply to our forest. Why? Becasue our operators really prefer not to have the rule. And, if it was put in place to assist small business, government should be willing to respond to these people when they say, "We don't need your help, thank you."

In fact, this rule allows a loophole to exist which diverts timber from those to whom it should rightfully go for processing.

This rule is not enforceable; the record shows this and it is common knowledge in the forest that this rule cannot be enforced. Every load of logs looks like another and it would take more federal employees and vehicles to actually enforce this provision than anyone is willing to commit. Frankly, this Thirty/Seventy Rule is unwanted by those it is intended to help; in this forest; it is a mockery to enforcement, making criminals of our people; it is too costly to administer with little good being accomplished. And, Mr. Chairman, the concensus of those most directly affected in my district is that any application of this rule to the small business sector of the Quachita National Forest should cease as soon as possible.

It is my opinion that this can best be accomplished by simply deleting the thirty percent allowance in this forest and requiring that 100 percent of all small business timber go to small business.

This is what our small business people have requested, and this is what should be done.

Mr. Chairman, I could relate in detail many instances of abuse, but I would encourage the committee to give particular attention to the expert testimony of those who are carrying the burden of this particular rule, our small mill operators.

Thank you.

Senator **Bumpers.** Please proceed, Mr. White.

STATEMENT OF GENE H. WHITE, PRESIDENT, BURNETT LUMBER CO., HEAVENER, OKLA.

Mr. **White.** I'll try to be as brief as I can. It's within the U.S. Government's best interest that it be somewhat responsible for the creation of jobs, good will and in lieu of taxes in areas where the Federal Government owns vast amounts of land to the point of being the dominant land holder of land. The small business set-aside program is designed to do just that job. By maintaining protective policies in favor of small business interests, the Government also protects it's own interest.

Historically, and I have attached two exhibits, this includes 1981, small business has paid more for Government timber than large, not less. In exhibit 2, it discusses the capital gains tax. It plainly explains that even if large land-based companies paid more for Government timber, that the net Government receipts would go down, due only to the capital gains tax advantage. It is quite easy to understand how and why large land-based companies can pay more for timber every day of bidding while saving money at each increase in bed. These same large business companies will represent, in probability, at this hearing that they are ready, willing and able to pay the current high prices and more for Government timber without indicating that, as a matter of fact, the Government net receipts are more from small business. The capital gains tax causes a far lower tax rate for large business and assures this to be a matter of fact.

Another point, Federal antitrust laws say that a Safeway food store may not build a new store in my town of Heavener, Okla., and proceed to sell groceries at below their cost, with the express intent of eliminating all competition in our town. With the elimination being successful, they could be totally dominant in our grocery market and then raise the prices without limit. This is against antitrust law. This type of action is known as predatory and is a violation of the law. Small business set-aside programs, as designed, protects small business from this predatory action and assures the Federal Government that it too will not suffer in receipts as a result of this type of action.

I think we're all aware that in recent Federal court cases, it would indicate that antitrust violations have been committed in the forest industry by many large firms. And the courts at this time have found them guilty and assessed large punitive damages.

The small business set-aside program has accomplished most of the in the Ouachita National Forest since it's inception. Several years ago, the States of Arkansas and Oklahoma gained more new large land based forestry companies. This has had an overall good effect on our economies. These companies were primarily land based and had no great need for Government-owned timber in Oklahoma and Arkansas, due to the fact that in these States, the Government is the minority landholder when compared to these large companies.

Due to a quite healthy homebuilding market, expansion was the thing to do and they did expand. These large companies expanded within and beyond their land-based ownership to a point that they needed public timber at a high price to establish tax basis for capital gains. And they needed timber at any price to feed their new manufacturing facilities that were exceeding their capacity to grow timber.

Historically, small business bidders were substantially all small business lumber manufacturers. The design of the set-aside law is such that set-aside timber must be processed by a small business manufacturing firm. So the historical set-aside percentage was established and created only by these firms.

These new large land-based companies, at the point of opening their doors for business, needed a dependable supply of logs for raw material and a dependable supply of loggers to bring this product in from the forest. The need at the time for creating this new supply of loggers is sometimes so strong and the capital investment needed by these loggers so high, that it is and was sometimes necessary for the large company to loan money and sign guarantees to these new loggers and for these new loggers.

In the beginning, these new loggers worked on large company owned land and lands—or timber held in contract by a large company. As overexpansion began to take it's toll, all of these new loggers did not have work to do all of the time. Since these new small loggers did in fact own their machinery, regardless of who put up the money and the guarantees, they began to bid on Ouachita National Forest timber as legitimate small business bidders. This is the first time many of us small business manufacturers realized that there was in fact the right to sell 30 percent of our set-aside timber to large business. The vast majority, if not all of us, had a record of never selling logs to anyone, large or small. Logs are our raw material, and we had then and have now no reason to sell. We are in the business of buying this raw material and selling a manufactured product from this same raw material.

This was the first time any of us had seen logs leaving a set-aside sale with a legal destination, being large business. I do not believe at the time that the new bidders knew that the timber they were buying and hauling was set-aside by law, and that the reason it was set-aside and the reason there was a given percentage set-aside, was due entirely to the small business manufacturers and their previous 5-year productive capacity. Had these loggers known all of the facts, they would obviously have known that any action taken to the detriment of small manufacturers would in a few short years lower or eliminate the set-aside program altogether. And they would find themselves back to day one when they started bidding those set-aside sales, only without the opportunity to be truly independent.

The Ouachita National Forest management has always created timber sales on a reasonably uniform basis by selling fairly equal amounts of timber annually and dividing the annual fairly equal amounts monthly. This method of selling has always kept things running smoothly for the operator and for the Government, since sales were sold, worked and closed in an orderly manner, and according to contract. These new bidders bid and bought an unusually large amount of timber in short periods of time, causing immediate timber shortages for small mills. Many of these sales purchased by these new bidders were set-aside, and many were from open sales.

Senator, I'm going to skip the next paragraph or two. It's been described two or three times in this hearing.

As these new nonmanufacturing bidders began to bid for Federal timber, they were successful bidders on open and set-aside sales. The rules of the timber management act state: "The supervisor of the forest will in his best judgment charge an open sale purchased by a nonmanufacturer to either large or small business according to his historical selling habits of the nonmanufacturer." The statement is plain. That if the supervisor has reason to be reasonably sure that a bid accepted by him from a small business nonmanufacturer, that the logs would be delivered to large business, that he may charge credit of the sale to large business as a part of their entitled percentage. This rule applies only to open sales.

We learned far too late that the supervisor of our forest had chosen not to ever charge any of these open sales to large businesses for many years. As a matter of fact, since the inception of the program. We received assistance from the SBA in getting a letter written to the Forest Service timber management staff directing him to do this in the future and to check the past for corrections. Two years later we discovered that this had still not been done. After voicing strong objection, offering substantial evidence, the Forest Service did begin to use this policy in a half-hearted degree in January of 1981. This was only done after years of neglect, and I might add, intentional neglect, since they had been directed by the SBA to take this lawsuit action. And I might add that the SBA has only supported our position after we demanded it to the level of strong intensity.

The significance of this above problem of failure to charge open sales purchased by small nonmanufacturers is as follows: Since the periods start out with only sales open to any—with all sales open to any bidder, large or small, it is only when large business over buys that the set-aside program is triggered. By the failure of the Forest Service to take action as directed, the nonmanufacturer bids on open sales being wrongfully charged to small business, have the immediate effect of delaying the triggering action. A worthy case can be made that small business nonmanufacturers could have purchased all timber available and hauled all of this timber legally to large business. As the small business mills close for lack of timber, the case could be made that small business was receiving all the available timber. The records will show that.

No one should have the reason to question our case since the small business nonmanufacturers were historically tied to these large business manufacturers, and with the large business manufacturers paying the best price, they would have to be fools to have sold to anyone else. This problem has had the most crippling effect on small manufacturers, and the laws and the systems are to protect us, but it seems to not have any incentive to work.

The next problem we found was that we felt that in our best judgment, keeping in mind that we are also timber professionals, that perhaps in some cases that more than 30 percent of the set-aside timber sales purchased by nonmanufacturers was being illegally sold to large business. Keep in mind, it's difficult for the nonmanufacturers to not sell to the mill that pays the highest price, even though it may be a violation of the contract with the Government.

When we set out to prove this assumption, we discovered that with timber sales lasting up to 5 years, and with the set-aside saw timber being mixed with non-set-aside pulpwood, and with the contract containing thousands of loads of product to be removed over 5 years over hundreds of miles of road, that we simply couldn't prove our gut feeling and our assumptions. We enlisted the support of SBA who stated they were not an investigative agency and who offered and delivered feeble efforts. We enlisted the support of the Forest Service who delivered the same efforts. Both agencies seem to resist rather than support our efforts to make the contract work as written by their own agencies.

We discovered in our checking that there was no real penalty for violation of this 30-percent part of our Government contract that was a deterrent to that violation happening again. The worst penalty might be closing of the contract, but at that time, the timber was cut, the market disrupted, and the damage was already done.

There seems to be no penalty for big business purchasing what would otherwise be illegal purchases. I enclose an exhibit 3. It's a letter from a large business representative to the forest supervisor of the Ouachita. As you can see in the letter, the gentleman states that he believes that "if small businesses received all of the timber charged to it, that large business would gain as we would choke on the volume." I don't know how a person could make that statement in writing to the Forest Service, representing the views of a large company, if he in fact didn't have firsthand knowledge that we were not in fact receiving our entitled timber. If he has that knowledge then his company might be a knowing participant or contract violation.

About 3 years ago we gave up. It was obvious that the rule allowing 30 percent of set set-aside timber to be sold to other than small business was impossible to investigate and enforce by us, and that the Government agencies had no intention of helping. We got together and decided that we would come up with a new solution that we could enforce ourselves and take the burden off of the do-nothing Government agencies. This solution was that since the Government lawmakers, in their good judgment, set the timber aside for small business, why should they then allow 30 percent to be sold to large. We determined that if the rule said 100 percent, that we on our own time could easily determine if a contract was being violated without getting lost in the 30-percent problem.

We approached the SBA and Forest Service with this proposal and met head-on resistance to any change, good or bad. We have solicited the help of our Senators and Congressmen now for 3 years on this issue, all the while working in conflict with the SBA, our so-called protective agency, and the Forest Service. This hearing today is our most advanced step toward controlling the problem, and we hope today we might instigate some action.

I repeat, item A, the system as it's created is good; B, the system is not working for various reasons; C, there is no intended monitoring of the 70/30 provision; D, there is no deterring penalty for violation; E, the system is not responsive to our wishes or congressional wishes: and F, we offer a small, simple but an effective solution.

My lumber company, Burnett Lumber Co., was destroyed by fire in July 1981. My company employed 50 to 70 people for over 40 years in an area in dire need of that employment. We have purchased and signed and bonded probably hundreds of Government contracts, carrying each to it's conclusion to the Government's satisfaction.

I cannot in good financial judgment rebuild my plant with the full knowledge that our timber supply is being purchased by nonmanufacturing speculators to the rate of 50 to 65 percent of the total volume. The strange thing is that all Government records will show that we are being taken care of by a well thought out law, and little do the lawmakers know what a shambles their own hired bureaucrats have made of the system.

I appreciate the opportunity to write and speak on this issue so vitally important to us. Thank you.

[The attachments to Mr. White's statement follow:]

Exhibit 1

Southeastern Lumber Manufacturers Association

871 FOREST PARKWAY
FOREST PARK, GEORGIA 30050

P O BOX 1606

TELEPHONE 404 361 1445

February 3, 1982

SUBJECT: Timber Prices on National Forest Timber Sales - Small Business vs. Large Business

TO: SLMA Federal Timber Purchasers

GENTLEMEN:

According to the Small Business Administration, in fiscal year 1981, large business paid an average of $217.21/MBF for the 4,506,368 MBF of timber they purchased from government lands nation-wide. Small business had to pay a few dollars more, $223.92/MBF for the 5,632.177 MBF of timber they purchased.

In Region 8, large business had to pay more than small business, $258.66,MBF for the 236,871 MBF purchased. Small business paid $187.30/MBF for the 373,354 MBF they purchased.

Below are the Region 8 and national figures comparing set-aside and open sale volume and values.

REGION 8-TIMBER PROGRAM SUMMARY

	TOTAL SALES	OPEN SALES TO SB	SET-ASIDE SALES TO SB	TOTAL SALES TO SB	TOTAL SALES TO LB
Number of Sales	582	213	201	414	168
Sawlog volume (MBF)	610,225	129,452	243,902	373,354	236,871
Value ($)	$131,197,518	23,447,171	46,482,282	69,929,454	61,268,060
$/MBF	$215.00	181.13	190.58	187.30	258.66

NATIONAL TIMBER PROGRAM SUMMARY

	TOTAL SALES	OPEN SALES TO SB	SET-ASIDE SALES TO SB	TOTAL SALES TO SB	TOTAL SALES TO LB
Number of Sales	3,591	2,072	586	2,658	933
Sawlog volume (MBF)	10,138,548	3,443,578	2,188,605	5,632,177	4,506,368
Value ($)	$2,239,975,883	765,420,686	495,720,896	1,261,141,582	978,834,301
$/MBF	$220.94	222.28	226.50	223.92	217.21

Sincerely,

Bob
Robert L. Davis
Forester

RLD/cw

Exhibit 2

SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION

671 FOREST PARKWAY
FOREST PARK, GEORGIA 30050

P O BOX 1606
TELEPHONE 404 361-1445

January 28, 1982

SUBJECT: Capital Gains On Timber

TO: SLMA Members

Gentlemen:

During the November, 1982 standing committee meetings, the Private Timber Subcommittee decided to survey the membership on the subject of capital gains treatment on timber.

It is believed by some members that large business benefits excessively by the current regulations on capital gains on timber while small business concerns benefit to a much lesser extent or not at all.

An example offered by an SLMA member:

> Presently, there are large companies across this country that own millions of acres of timber land. Each year they purchase a small amount of timber outside their fee land and at times pay ridiculously high price. The prices they pay are used to establish a fair market value for the timber they cut from their own lands. The timber cut from their own land is used as capital gains, therefore cutting the tax on earned income tremendously.

For example:

> Company XYZ owns 2,000,000 acres of timber land and have for many years. They operated sawmills and plywood operations, and cut 200,000,000 feet of timber annually. Of this they purchase 30,000,000 feet from outside their land base. They pay an average price of $300.00 per thousand feet for this 30,000,000 feet; a total cost of $9,000,000.00. The average cost per thousand feet of timber from their own land is $60.00. Therefore, the 170,000,000 feet of timber cut from their land cost $10,200,000.00. Because they established a fair market value of $300.00, they can subtract the $60.00 original cost from $300.00 and charge themselves an additional $270.00 per thousand feet for the timber cut from their land. This comes to $40,800,000.00. Therefore, they have a total cost of timber as follows:

30,000,000 feet @ $300.00 = $ 9,000,000.00
170,000,000 feet @ $ 60.00 = 10,200,000.00
Actual Cost = $19,200,000.00

Capital Gains
170,000,000 feet @ $240.00 = $40,800,000.00
Total Cost = $60,000,000.00

This is a direct cost of operation so their taxable income is decreased by $40,800,000.00 and at a 48% maximum corporate tax rate this saves XYZ Company income taxes of $20,400,000.00.

There are a large number of the major forest product companies using this tax advantage each year. When the fair market value for timber was $80.00 a few years ago this was reasonable, but now it is ridiculous.

An alternative offered is to have a ceiling on the amount allowed for capital gains on timber ($500,000.00). The Subcommittee would appreciate your thoughts and recommendations on this subject. Please fill out and return the enclosed questionnaire as soon as possible. These will be reviewed by the Subcommittee which will form a consensus to be submitted to the Board of Directors for their consideration and possible action.

We appreciate your help in this matter.

Sincerely,

Bob

Robert L. Davis
Forester

RLD/cw
Enclosure

Exhibit 3

Georgia-Pacific Corporation

Crossett Division
P. O. Box 407
Glenwood, Arkansas 71943
Telephone (501) 356-3191

April 24, 1981

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Soil & Water
File

Mr. John Orr
Supervisor
Forest Service U.S.D.A.
P.O. Box 1270
Hot Springs, Arkansas

Dear John,

I have studied the buying practices of several SBA mills and loggers and would like to express my concern about the SBA program on the Ouachita National Forest. I realize my concerns touch on national issues and concerns and cannot be handled at your level alone; however, you as supervisor of this national forest have an input to Region 8 and the Chief. I wish these concerns to be passed along through the proper channels.

There were three SBA bid openings April 23, 1981. These sales brought as a whole approximately 80% of the value of open market U.S.F.S. timber. This is not as big a concern as the number of SBA bids turned in on each sale. Compartments 9 & 10 on the Caddo received 3 SBA bids. Compartment 229 received 2 SBA bids and Compartment 625 received 4 SBA bids. I hope the location of the sales is not influenced by the "wheel that squeaks the loudest".

The size of the roundwood on Compartments 9 & 10 is 11 trees per CCF. This is a better than average size for roundwood on this national forest. These type of sales are always advertised SBA sales.

The SBA "turn-back road" program is a good program; however, I feel the intent was to be exercised on SBA advertised sales. I feel that the SBA purchasers should bare the same risks on open sales as do large businesses, this includes the building of specified roads. This gives the SBA's an unfair advantage and should not be allowed.

I would like to see the 30% clause for sale of SBA timber to large businesses eliminated. This would allow large businesses on this national forest to pick up several SBA sales for minimum bid as they would literally "choke" on the volume made available to them. With the 30% outside sales, they can reduce their already reduced price to the mill under the SBA shelter and bid higher than the timber is worth on open bids. This encourages speculation.

As I have stated previously, I know these concerns are out of the realm of your authority but Region 8 and the Chief receive your comments. I believe you will analyze the SBA program and relay your honest opinion to your supervisors.

Sincerely,

Everett Wells, Jr.

Everett Wells, Jr.
Area Timber Manager
Georgia-Pacific Corporation

EWJ/lw

cc: Mr. K. D. Clinton
Mr. John Shackelford

Senator BUMPERS. Thank you, Gene. Dale?

STATEMENT OF DALE RODGERS, OWNER AND OPERATOR, DALE RODGERS LUMBER CO., MENA, ARK.

Mr. RODGERS. I'm Dale Rodgers, owner and operator of the Dale Rodgers Lumber Co., P.O. Box 232, Mena, Ark. First, I would like to thank Senator Bumpers, Senator Pryor, Senator Boren's staff that is here, the Forest Service and the Small Business Administration, for the opportunity of expressing my views on the Forest Service set-aside program and your continued interest in the plight of the small businessmen.

I know that you're all aware that 60 percent of the timber sold from the Ouachita National Forest is set aside for small business. The issue, as I see it, is how to enforce this set-aside so that it will be fair and equitable to all parties involved.

The regulations that we are operating under provide that not more than 30 percent of the volume of timber may be sold to those other than small business firms and this 30/70 rule has created and is creating severe problems for the small businessman. Our purpose here today is to request this 30/70 rule be eliminated in it's entirety, that the 80 percent set-aside be enforced by a 100-percent rule so that all the set-aside timber that is set aside for small business, actually goes to small business.

The problems with the 30/70 rule and its enforcement can be classified basically as follows: Nonmanufacturers are bidding excessive amounts above the appraised or real value of the timber and holding that timber which they have purchased off the market for a higher price, and thus speculating on the increase in the price of timber. These nonmanufacturers at the present time can sell 30 percent of the the set-aside timber to large businesses under the present rule. This practice has the following effects on the small businessman, the local economy and the Forest Service:

By holding this timber from small business manufacturers, it is forcing some of our small businessmen in our area out of business because of the depressed lumber market, causing and contributing to great unemployment. There are presently five saw mills in my area closed due to the depressed lumber market and the artificially high cost of timber. Of course, this has added 225 people to the unemployment rolls in our region.

We also produce litter for 1 million chickens per month for the already depressed poultry industry. Incidentally, I talked to Cliff Lane yesterday. He's the largest poultry producer in America. He says that without a supply of shavings from the saw mills in our area, it will add to his already problem with our 50 percent additional cost of laying this litter down in his brooder houses. So, that's one of the problems.

Of course, the removal of the timber from the market by nonmanufacturers holding timber off the market has a detrimental effect on the turn back payments which go to our schools and counties. You gentlemen know particularly, Scott County, Montgomery, and Polk County is heavily dependent on Forest Service turnback money to operate their counties and their schools. In effect, they receive no money from the sale of this timber until the timber is marketed and the Government is paid. Which could be 2 to a maximum of 5 years on the Ouchita.

For your information, I'd like to give you some figures furnished by the Forest Service regarding the plight of the small businessman and the sale of timber. The total volume sold from March 1, 1981, to the present date is 93 million board feet of saw logs. Of this amount, 16 small business manufacturers purchased 41,922,000 feet, or approximately 45 percent of the total sales. Four large business manufacturers purchased 24 million, or approximately 26 percent of the total sales.

One small business nonmanufacturer has contracted for 27 million, or 29 percent of the total of saw logs, which computes to in excess of $6,630,000 which he has contracted to purchase. As I stated earlier, this contract affects the schools, the counties in our region. This money is not generated until the timber is actually marketed. Also, I believe that the Forest Service has some exposure here because they have as much timber tied up by speculators who have no money involved in the actual contract.

The Forest Service does not know if the timber sold should be charged to small businessses or not, because many times, at the time of sale, the nonmanufacturer who purchases the timber does not know to whom the timber will be sold at the time he contracts to purchase the timber.

The effect of the 30/70 rule causes another problem with the Forest Service because the Forest Service cannot effectively police the sale, in that it is virtually impossible for the Forest Service or the Small Business Administration to trace the timber after it has been removed from the stump.

As I understand it, one of the reasons for the institution of the 30/70 rule—I believe this has been stated before by the Forest Service here this morning, SBA maybe, was the feeling that larger businesses could market some species of timber that the small businesses, in times of certain market conditions, could not market. It has been my experience, from having been in the lumber business for 34 years in Polk County, that this is not true of the Ouachita National Forest, because most of the volume of our timber is pine and logs are manufactured into lumber, and the round wood is either made into wood chips or sold as posts and poles. So, I don't really feel like this poses any problem on the Ouachita National Forest.

The elimination of the 30/70 rule certainly wouldn't cure all of the problems with the small busines manufacturers, but we would be able to complete more effectively in purchasing the timber if that rule were changed so that all the set-aside timber must be manufactured by or sold to small businesses.

Also, the elimination of the rule and a guarantee that 100 percent of the set-aside be sold to the small business would create a more orderly flow of cutting and marketing and make it easier for the Forest Service to administer the program.

I presently have approximately 60 employees over at my operation. We are operating at 80 percent of our capacity today. And we could continue to operate, even with the depressed market if we could buy timber at or near the advertised price. If not, through the next 3 to 6 months, I, too, may be forced to close down and put 60 more people on the unemployment rolls.

We are here today asking that the 30/70 rule be eliminated and that in its place be substituted a 100-percent rule. This, in my opinion, would work to the advantage of small businessmen, for whom the 60 percent set-aside was originally instituted, and would work to the detriment of no one. It would be easier for the Forest Service and the Small Business Administration to administer, police, and would fulfill the intent of the law regarding a set-aside program for small business.

Thank you very much for your attention and your interest in this matter. I would ask that if any of you have any questions. I will be pleased to attempt to answer them for you at this time; and if you so desire, I'll be pleased to answer them in writing so that the record of the hearing may be complete. I know that I may have rambled around in my statements, but I want you to understand our position, and trust that we will have made it a little clearer to you, and will clarify any points I can at this time. Thank you.

Senator **Bumpers**. Dale, thank you very much. Now, before Senator Pryor and I question the panel, George, if you would, let me just ask you this question. The rule of the Forest Service under the Small Business program is that only people eligible to bid under the set-aside program are those who are primarily engaged in logging or the forest products industry. How does the Forest Service now, or in the past, determine whether a bidder is primarily engaged in logging or the forest products industry in order to be a qualified bidder and accept his bid?

Mr. **Leonard**. Mr. Chairman, that's part of the definition of the size standard. And the responsibility for making that determination lies with the Small Business Administration. When our bidder comes in on a set-aside sale, he simply checks on his bid form whether or not he is qualified as small business——

Senator **Bumpers**. It's a self-certifying thing?

Mr. **Leonard**. Self-certification, and if anybody challenges it, then the responsibility for making the determination that he meets those qualifications is with the Small Business Administration. So, if we have a concern, ourself, we can challenge it, or any other bidder or anybody that's interested and can give a basis for his concern, can ask for the Small Business Administration to make a size determination. As a matter of fact, on our set-aside sales, after we have determined who is the high bidder, we delay award of that sale for 5 days in order to permit anyone who is interested to challenge that size and initiate a size determination.

Senator **Bumpers**. Mr. Kernan, let me ask you this question. Do you not, unless it's challenged, do you not independently investigate or determine whether or not that sale certification is accurate or not?

Mr. **Kernan**. We do not, Mr. Chairman.

Senator **Bumpers**. Well, here we have from Mr. Rodgers here, one of the most serious allegations of a flagrant violation of the rule. Now, let me repeat the statistic—Dale, I'll come back to you in a minute on how you computed these figures. But I just want to give you these statistics: 16 small businesses purchased in the past year in the Ouachita—16 small businesses bought 45 percent of the timber; 4 large businesses bought 26 percent; and 1 small nonmanufacturing person or firm bought 29 percent. One person who isn't even engaged in the business bought more than four large business firms in the State. Now, you would not check that out unless Mr. Rodgers or somebody came to you to ask you how these people that are not engaged in the logging business, or are not primarily engaged in the business, bought 26 percent of all the timber purchased—29 percent of all the timber bought in the Ouachita last year?

Mr. **Kernan**. My understanding, Mr. Chairman, was that—if I know the case you're referring to—the company involved had certified to be a small business. Therefore, that percentage would be lumped with the other small business purchases.

Senator **Bumpers**. I don't follow that, Mr. Kernan. Say that again.

Mr. **Kernan**. Well, this 29 percent represents purchases made by a small business, notwithstanding the fact that it was a nonmanufacturer. And my recollection is, if it's correct, is that at one time we made a size determination on that particular firm. Is that correct, Mr. Orr?

Mr. **Orr**. I believe about a year and a half ago.

Mr. **Kernan**. About a year and a half ago, because of similar type requests from the industry here——

Senator **Bumpers**. Well, what did you find from your investigation?

Mr. **Kernan**. We found the business to be small, and to be in substantive compliance.

Senator **Bumpers**. Was this a corporation or an individual?

Mr. **Kernan**. I can't answer that. I don't know the particulars. I'll be glad to find out and supply them to you.

Senator **Bumpers**. I'm going to ask you for that now, Mr. Kernan, so that—and not issue a formal request for it later. I'm going to ask you for it for the record now, and I would appreciate you getting it to me as soon as possible.

Mr. **Kernan**. I'll be more than happy to. I don't think that that particular question was an issue in this size determination. I'll be glad to give you the entire file on the case.

[Subsequent information was received and follows:]

SBA U.S. Small Business Administration Washington, DC 20416

March 1, 1982

Mr. Alan Chvotkin
Chief, Minority Counsel
Senate Small Business Committee
Room 424 D
Russell Senate Office Building
Washington, D. C. 20510

Dear Mr. Chvotkin:

I appreciated the opportunity to participate in the hearings of the Small Business Committee held in Little Rock on February 19, 1982.

In the course of the proceedings I indicated that the Small Business Administration had conducted a size determination on the Umpire Timber Company in 1980, and it was found to be small. As a follow-up to this, Senator Dale Bumpers asked that we supply the committee with additional information regarding this determination.

I regret that I was mis-informed on this question and gave an incorrect response. The investigation made in 1980 was not a size determination, but rather an investigation of an allegation that the company had sold more than 30 percent of a set-aside sale to large business.

This review, as well as two additional reviews of a similar nature, resulted in findings that did not support the allegations. We conducted a Certificate of Competency review in 1976 and a size Review in 1973 that affirmed small business status.

As you are aware, we are now conducting an investigation of another allegation of a violation of the 30% rule, and we have been advised that the U. S. Forest Service has suspended the contract until this investigation has been completed.

I am sorry that the information supplied to the Committee on this subject was inaccurate. Please convey my apologies to Senator Bumpers and Senator Pryor.

Sincerely,

J E Kernan
Joseph E. Kernan
Chief, Natural Resources Sales
Assistance Branch

Senator **Bumpers.** Are you telling me now that if somebody challenges a sale, and you investigate it, that you would not check the capacity of the mill? Wouldn't that tell you whether or not this was a fly-by-night operator or whether it was a legitimate operator or whether he was just a broker?

Mr. **Kernan.** Well, I think we come back to what, I believe, George Leonard said earlier. The crux of it is, the appropriate definition of a business that is, in fact, primarily engaged in the logging or in the forest products industry. Someone else had mentioned earlier that this business is speculative, but what separates a speculator or as you referenced, a fly-by-night operator, from a legitimate business interest?

Senator **Bumpers.** Mr. Kernan, I'm afraid that if I went out here and I had a crosscut saw, you'd rule that I was primarily engaged in this business. All four of these gentlemen are small mills—operate small mills in this State. And I can tell you, I know a little bit about three of their operations. And I can tell you that it's a very, very tough thing for them right now.

In the state of the economy, their communities will be dramatically affected, just as northern Arkansas has been terribly adversely affected because of this. And I don't want to see those people layed off. But there is one thread that has run through every one of their testimonies, and that is that if we didn't have the 30-percent rule, the thing would be self-defeating. In other words, Mr. Cox has said it would take care of itself, if you didn't allow anybody to sell, any small business to sell that 30 percent. Now, I would like to hear your comments and George's comments both on that proposition.

Mr. **Kernan.** I would be inclined to agree that it may be easier to monitor the compliance, because any sale to a large firm would become apparent and trigger concern.

Senator **Bumpers.** If I may just interrupt, Mr. Kernan, I want to say the same thing that Mr. Cox just said. You know, big business has a very legitimate interest in the National Forest, too. And quite frankly, if I were one of the larger concerns in Arkansas, I would be concerned that one person was getting more timber than I was getting. Four of the biggest firms in the country get less than one apparent speculator is getting from the National Forest. And I would be concerned if I were them. But when they buy that 30 percent, they don't have any obligation, and I don't blame them for not checking to see whether the seller is exceeding his 30-percent limit or not. That's not their obligation. That's Small Business Administration's responsibility.

Mr. **Kernan.** I agree that it would be easier to monitor. However, if the principle that a small business should have available to it an option as to the disposal of sawtimber is a reasonable premise, then I think that we should strengthen the monitoring of the activity and possibly strengthen the penalties wherein violations, in fact, occurred.

I spent 18 years of my life as a small business person. And I spent 14 years with SBA, and I have a great deal of respect for the integrity of the small business community. I don't think that violations come readily or easily. I don't think the small business people are inclined to circumvent the intent of our laws and our regulations. I think that if the concept bears scrutiny, then it's incumbent upon us and the

Forest Service, as Mr. Leonard mentioned earlier, to enforce the log disposal certification, which would give us a better look at where saw logs are going. It's incumbent upon us to increase our surveillance, do something about it, do it promptly, respond and try to make it uncomfortable for those few who would in fact violate the contract.

Senator Bumpers. Mr. Kernan, I'll be candid with you. I don't have any confidence in SBA's ability to monitor this program. I don't think your investigative arm is sufficient to determine whether these rules are being violated. But what you have here—we had 569 bankruptcies in the United States last week. I think that's the most bankruptcies in the history of the country in 1 week since the Great Depression. And I can tell you that this is one of the most depressed industries in the United States. I think these gentlemen have all made a very important argument for their position. It occurs to me that if you accept their suggestion, then the necessity for investigating these cases would be dramatically reduced, and the ability to determine whether or not the rules have been violated would be much easier to determine. And I can't see—if it's necessary. perhaps we could get a rule that only applied to the Ouachitas or others similarly situated. Maybe this wouldn't be appropriate in Oregon or Washington. But it's obvious to me at this point that it certainly would be appropriate here.

Mr. Kernan. It certainly is within the limits of the testimony that I've heard here from these gentlemen. There are other interests that have a stake in it also, although they are not here today. But I agree, this is compelling testimony.

Senator Bumpers. Thank you. Senator Pryor?

Senator Pryor. Mr. Kernan, if I might ask you a couple of questions. I know in your statement you talk about the history of the rule and some of the premises. What is the real purpose of the 70/30 rule in your opinion? The real purpose? The intent?

Mr. Kernan. To give the mill operator, the logger, the manufacturer, the nonmanufacturer, flexibility to deal as economically as possible with a given sale.

Senator Pryor. The next question, and I come back to the statement you just gave, that you were 18 years in small business yourself, which is commendable. How would you feel today if you were one of these eight small business people in our State, and basically felt in SBA that—I think what they're saying, is—I hope I'm not drawing the wrong conclusion—that they don't seem to find an advocate in Small Business Administration, which is there to serve small business, for their cause. How would you feel if you were in their shoes?

Mr. Kernan. I would feel lonesome, I guess, if that were the case. However, the one thing that I've heard throughout this testimony is that this is a good program. There are problems, enforcement problems, but by and large, the timber set-aside program has been an assistance to small business. I assure you and I assure these gentlemen, that our interest is the interest of all small business: and that we certainly aren't inclined to want to put them in a position where we are hurting them by our regulations.

Senator Pryor. Is the present rule of 70/30 set-aside, is the present rule being circumvented, in your opinion?

Mr. Kernan. I think there are——

Senator Pryor. I think Mr. Rodger's statement has indicated that there is evidently something going on here. It certainly should allow suspicion that that rule is being circumvented.

Mr. Kernan. Being the advocate of small business, I do not believe that it is as flagrant and as widespread as some testimony has indicated. I don't think small business people as a group operate that way. I think they're too busy about other things to try to find ways to get around our rules and regulations. However, I do certainly subscribe to the fact that there are some violations, there have been, and there probably will be if it's 100, or 90, or 80 percent of whatever it is. Those are the ones I think we should focus our attention on.

Senator Pryor. What are we today doing about those violations?

Mr. Kernan. Well, in this particular forest, most recently, we did have notification from the Forest Service of an alleged violation. This would be within the last 10 days. Our regional forestry——

Senator Pryor. That came awfully close to the time of this hearing, I might add.

Mr. Kernan. That could have been coincidental, but at any rate, it was called to our attention. Our regional forestry specialist, Bill Berry, in Atlanta, requested that an explanation be given, and that appropriate records be sent to SBA. We sent out a registered letter, advising that the particular company would be given until February 26 to make this information available to us for review. We feel that we have another avenue that we can always use if the preliminary review should so indicate. We have the opportunity of referring this matter to our Inspector General. We do have trained investigators that can make a thorough review. In cases where we feel the violations are repetitive, we give consideration to doing that. That's what we could do at this juncture.

Senator Bumpers. Mr. Kernan, you know, the Forest Service and the SBA could change themselves. And I hope after this hearing today, that you will jump right on that. Because that's the expeditious way to do it. If we have to—if Senator Pryor and I have to introduce a bill in Congress, and shepherd that thing through both the committees and the House and the Senate, everybody knows how laborious and difficult and time consuming that is. And I would hope, and I'll be back in touch with you, I would hope that the SBA and the U.S. Forest Service, both of them have joint responsibility under this, would change the rules almost immediately based upon the testimony here today, if there isn't anything to contradict some of these allegations that have been made here.

If I may, John, do you have any reasons to challenge the figures of Dale Rodgers?

Mr. Orr. No, sir, I don't.

Senator Bumpers. Are you familiar with the firm he's talking about?

Mr. Orr. Yes. Very much so.

Senator Bumpers. Does he have more than a crosscut saw or not?

Mr. Orr. Well, yes. He's got something more than a crosscut saw, but I don't think it's running right now.

Senator Bumpers. Thank you. George?

Mr. Leonard. Let me make a couple of comments on this issue, Mr. Chairman. We talked to John Orr yesterday because we anticipated this question coming up today. And he told me, yes, if we went to

100 percent small business share, it would certainly make it easier for him to administer. There are some drawbacks to it, and I think you need to be aware of those.

No. 1, we think that there are legitimate loggers who should be able to participate in the small business program. There are loggers who own their own equipment, and throughout the country, and I understand there are even some of them here, who go out and buy timber and would like to sell it. On the set-aside sale, that logger has got to sit down at auction or at the bid table with these same gentlemen that you have sitting here before you. If he is mandated to sell 100 percent of that volume to these gentlemen, he's going to have some problems at that bid table because—

Senator **Bumpers**. Now, just a minute, George. So, that we're on the same wavelength, all we're saying is, if anybody is legitimately in this business, he has a perfect right to bid. All we're saying is, if he's not going to mill it himself, he's got to sell it to another small business.

Mr. **Leonard**. That's right. But if that's his limit, he is under some constraints. Now if—one of the reasons for the 30/70 rule as it currently is, is that if he has the ability to merchandise a portion of that sale, maybe it's the poles or the pilings which have premium prices—and I understand that on the Ouachita, that's not a significant issue. But if he's capable of selling some of that volume, then he can compete at the bidding table with the small business manufacturer. If he's trying to compete at the bidding table and can only sell his products to the people he's competing with, then he's obviously at some disadvantage.

Senator **Bumpers**. George, what you're trying to do is make this a three-tiered affair instead of a two-tiered affair.

Mr. **Leonard**. No, I'm really not trying to make a third tier. What I'm simply saying is, we think that logger is a legitimate purchaser and that he can only be a legitimate purchaser, can only have a fair shot at it if he has some ability to merchandise his logs. So you need to know that if we restrict it to 100 percent, we are constraining that logger. Maybe that is a legitimate constraint in order to make the program operate for the small business manufacturer, but it is a fact.

The other thing that we need to watch for on the Ouachita is that most of the sales here are mixed sales of saw logs and pulpwood. And virtually all the pulpwood goes to large business mills. And there is a rather fine line between what's a saw log and what is a pulpwood log. You know, in terms of contract, we break it off and rather arbitrarily say that if this log comes from a tree of 10 inches or larger, it's a saw log. If it's from a smaller tree, it's a pulpwood log. But in fact, in the marketplace, that switches depending upon the relative demand for pulpwood and for saw logs. And some of the time—most of the time, some of that pulpwood is more valuable to go into a "chip and saw" than saw logs. On the other hand, there are periods, and some of the depressed market periods are the ones, where that little saw log at that 10-inch breakpoint will actually earn more for the man if it goes into the pulp market.

Senator **Bumpers**. George, the fact of the matter is that most pulpwood sold just to small independent contractors who in turn sell it to say IP and Georgia Pacific and so on?

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Mr. Leonard. But on the timber sales—the man who bids on the timber sales is buying both pulpwood and saw logs at one sale.

Senator Bumpers. I understand that. But he's turning around and selling it to another small logger who in turn is going to sell it to IP.

Mr. Leonard. That's right. But the concern is, what if we get some mixed loads, and we get a few of those marginal logs that end up—it's a 10-inch log or an 11-inch log that by definition is a saw log and subject to the 30-percent rule, but it gets mixed up in the load and ends up at a big business mill. Then we have a technical violation if we've got a 100-percent requirement.

Senator Bumpers. Gene, do you want to respond to that?

Mr. White. That's where we will enforce the law without requesting your help.

Mr. Leonard. What I'm saying though, 100 percent requirement will create some problems on the margin. There's going to be 1 percent or a half of a percent error where the guy loads a log on the wrong side. You need to be aware that when you say 100 percent, and if we were to mandate 100 percent by law or by regulation, that you're going to cause some enforcement problems at that level. They may not be of the same magnitude as the 30/70, but there will be a problem.

Senator Pryor. I apologize to the panel and to Senator Bumpers and others. I am out of time and will have to leave, but since I do have the floor for just a moment, I would like to recognize three individuals that I know are from Oklahoma representing Senator David Boren, and representing Senator Don Nickles, and Congressman Wes Watkins. These gentlemen are here and I thought it might be good to have their names sprayed upon the record at the proper time. Also, for the record to indicate that we have State Representative Oden Adams with us this morning, who certainly is in the heart of this particular area. And also State Representative Bud Rice. I don't see any more right at this time. I thought the record should show that they are here.

Senator Bumpers. Would those three representatives from Senator Nickles and Boren's office, and Congressman Watkins office, would you stand. We may have other people from Oklahoma here who would like to contact you after the hearing.

[Individuals stand.]

Senator Bumpers. Thank you very much. Gentlemen, thank you for your testimony. Dale, did you want to add something?

Mr. Rodgers. Mr. Chairman, for the record, these figures that I gave you were taken from the Forest Service records. And this included all timber sold. It was not particularly set-asides, open sales or what. It was all timber sold, and it was taken from the Forest Service records.

Mr. Cox. Could I make one more short statement? From the beginning of time, pulpwood and top wood was not very—there was no regulation set on it either way. It could go to big business or small business or what have you. And saw logs is the only thing that comes under the 30/70 rule. So, whoever has the sale, can do what they want to with the top wood and pulpwood, if that wasn't clear. Thank you.

Senator Bumpers. Thank you, Mr. Cox. That's a good distinction. I'm glad—I didn't realize that. I'm glad you brought that up.

Our next panel consists of Mr. Waymond Teague, woodlands manager of Bibler Lumber Co. in Russellville; Mr. J. C. Dellinger, Arkansas Kraft Corp. in Morrilton; Mr. John Gram, president of the Public Timber Purchasers Group from Portland, Oreg. Gentlemen, if you would, testify in that order.

Before you gentlemen start testifying, I have a resolution here that was prepared from the Arkansas Forestry Association, and I would like to, without objection, offer this for the record.

[Resolution follows:]

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RESOLUTION

ARKANSAS FORESTRY ASSOCIATION

At the request of the Arkansas Forestry Association Board of Directors, the Executive Committee adopted the following Resolution:

BE IT RESOLVED that the Arkansas Forestry Association is in support of strengthening U. S. Forest Service rules to discourage speculation of National Forest timber purchases.

This Resolution passed by the Executive Committee of the Arkansas Forestry Association on February 9, 1982.

B.J. Pavlovich
B.J. Pavlovich
Executive Vice President

Attachment: List of Board of
Directors and Executive Committee

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Senator **Bumpers.** At the conclusion of this panel, anybody who would like to make say a 2-minute statement regarding this, or anything else that has happened here, I'll be glad to hear from you. Mr. Teague, please proceed.

STATEMENT OF WAYMOND TEAGUE, WOODLANDS MANAGER, BIBLER BROS., INC., RUSSELLVILLE, ARK.

Mr. **Teague.** Mr. Chairman, Senator Pryor, I am Waymond Teague, woodlands manager, Bibler Bros., Inc. of Russellville, Ark. The first Bibler sawmill was established in the Arkansas River Valley near Russellville before 1900, and the company has been in continuous operation since that time. Currently, Bibler employs 175 persons in the mill operations and contracts with 35 logging contractors, who are small businesses, who employ another 175 persons. Also, we have contracts with three roadbuilding contractors who are small businesses.

We were small until 1973, when we became a company of Great Northern Nekoosa Corp. We feel that we are familiar with both sides of today's topic.

The Ozark and the Ouachita National Forests have provided approximately 50 percent of our timber needs in the past. The opportunity or purchase this timber is absolutely essential to the continued existence of our mill operation. Access to this timber must be dependable and uninterrupted.

The current SBA timber sale set-aside program makes the availability of this wood suspect. The intent of the set-aside program is good, but there are inequities for both large and small businesses.

One of the biggest shortcomings is that there is no systematic auditing or accounting of the program by either the SBA or the Forest Service to insure it is fulfilling it's purpose and to prevent violation of the 70/30 rule. In fact, the interagency agreement does not even provide for a penalty for selling of timber in excess of the 30 percent. Investigations into wrongdoings are only undertaken if another company files a formal complaint against one of it's neighbors. Most of the time this complaint must be filed with a limited amount of knowledge.

The 70/30 rule allows the small to buy in a protected environment and sell on the open market. In an area of high competition this can be very profitable. It also perpetuates an artificially high base share; a base share in excess of the small's actual needs.

The Ozark National Forest has not had a small business located in the Forest Service's designated main block market area since 1973, and we were that small business at that time. Prior to 1973, Bibler's purchases contributed to the small base share; and when we moved up to large business status, this timber was no longer available to us. It went to the remaining smalls.

The small base share is allowed to increase and decrease by the recomputation of the base share every 5 years. But the small base share is never allowed to go below 50 percent of it's historical high. This means that on the Ozark National Forest, the small base share will never be below 47 percent, although again there have been no smalls in the area since 1973.

We have bought a large part of this set-aside timber in the past because there were no small bidders. It has certainly contributed to our continuing operations. But there is no assurance that this timber will be available to us in the future. This makes long-range planning and capital outlays questionable. You might say we are operating today because no small has chosen to locate in our area.

The Forest Service timber sale packaging is a burden on all purchasers, and this burden is compounded by the set-aside program. When pine roundwood is included with pine saw timber on a set-aside sale, it is unavailable for purchase by a large who is the ultimate user of the wood. When pine saw timber is included on a hardwood saw timber set-aside sale, it is a burden to both small and large. The small doesn't want the pine and the large can't buy it, in many cases I might add. The small must dispose of it by selling to a large at either a loss or profit, depending on the market and type and quality of the pine. I'd like to skip that next paragraph.

Roundwood is not included in base share computation. This allows the small to get their base share of saw timber and all the roundwood that happens to be on their sales. In reality, the small could be buying a much greater share of the wood sold than their computed base share. A study we did in 1978 and 1979 showed that the open sales in the Ouachita and Ozark National Forests combined sold for approximately 21 percent more than the set-aside sales. There have been instances also when set-aside sales have had much longer contract terms than open sales of equal volume.

In areas that have an excess of set-aside timber, such as the Ouachita market area, the smalls are able to pick the better sales, thereby gaining the advantage in manufacturing and sales. Because of the excess they can buy the lower cost set-aside sales, then go into the open sales market, pay more than fair market value, and average the price of their bought timber at an acceptable level.

A small can elect to have the Forest Service build a specified road if the cost exceeds $20,000. This option is not available to a large. If the actual road construction cost exceeds the allowed purchaser's credit, the large will have to absorb this cost while the small can pass it on electing to have the Forest Service build the road.

The Ozark and Ouachita are two different market areas with two separate set-aside programs functioning independently of the other. For those smalls who are in a geographical location that allows them to buy in both market areas, there is a double advantage. There is no coordination between the two areas and it is possible for that part of both market areas that the smalls buy in, to be overloaded with set-aside sales without the knowledge of the situation by either forest. This allows the small to again selectively purchase the better sales.

By choosing to buy in one forest and not buy in another, the triggering mechanism can be manipulated on either, or both, of the forests. An interesting side note, upon purchase of an open sale, a nonmanufacturer can also manipulate the triggering of the set-aside program by declaring to which they intended to sell, small or large. Certainly, the nonmanufacturer would want to declare it was going to large so as to continue the triggered program.

At one time, the Ozark designated three set-aside sales that were of superior quality in a geographical area that had only one small. Bibler made a request at that time that one or more of these sales be declared open and another sale of equal quality and size be designated set-aside in an area that had at least two smalls, for reason of competition. Their reply, and I quote,

> This (designation of sales as set-aside in a geographical location with only one bidder) does not provide for a competitive situation for set-asides, but the rules for making timber available to the small businesses still apply. In selecting set-aside sales for our last sale period there was only one other choice that could have been made in lieu of the Fern or Mineral Hill sales. This is the Wicked Creek sale on the Magazine district. The volume here is equal to the Fern sale. However, there is considerable small roundwood and specified road work involved. This is not an attractive sale package for most small businesses in this area, when consideration is given to the type of material needed and the capabilities needed to hand the sale.

Certainly, this is a double standard.

In the final analysis, the set-aside program is a subsidy to small business. The question is whom does it benefit, the Government, either Federal or local; the mill owner, who is usually a sole proprietor; the employee and the community; the consumer; or is it simply lost to inefficiency. The consumer does not benefit because lumber seeks the highest selling price. The county government's share of the timber sale revenue is reduced also.

In summary, I believe the intent of the SBA set-aside program is good. I also believe certain changes should be made to insure equity for all concerned. These changes should include a systematic audit and documentation of the disposition of all set-aside timber; a penalty for violation of the 70/30 rule; annual recomputation of the small base share and a lowering of the minimum base share; prohibit the mixing of exclusive use products and/or species on sales; include roundwood into base share computation; equalize quality and contract term length of the sales; establish coordination of the set-aside sale volume and location between adjoining market areas.

I'd like to thank you for the opportunity to appear before the committe today. I'll answer any questions you have.

Senator **Bumpers**. Thank you. Mr. Teague. It's a good statement and some good suggestions. Mr. Dellinger?

STATEMENT OF J. C. DELLINGER, VICE PRESIDENT-WOODLANDS, ARKANSAS KRAFT CORP., VICE PRESIDENT, PINECREST LUMBER CO., MORRILTON, ARK.

Mr. **Dellinger**. My name is J. C. Dellinger. I'm vice president, woodlands for Arkansas Kraft Corp. and vice president of Pinecrest Lumber Co. Both of these companies are wholly owned subsidiaries of Green Bay Packaging, Inc., a privately owned corporation whose primary business is corrugated containers manufactured from kraft linerboard.

We have operated a kraft linerboard papermill at Morrilton, Ark., since 1966, and a sawmill at Menifee, Ark., since 1972. Arkansas Kraft employs 500 Arkansans, and another 110 are employed by Pinecrest Lumber Co. This brings the total to 610 employees.

A primary consideration in selecting the Morrilton site for our papermill was its proximity to both national forests. These forests were handicapped in their timber management activities because the market for small pulpwood size trees, which must be utilized in selective timber management, was unreliable. When we began our papermill operation in 1966, most of the pulpwood timber was sold in separate sales. But in the early 1970's the USFS began selling virtually all their timber in integrated sales in which the pulpwood and sawtimber were combined. This practice limited our ability to purchase pulpwood because we could not offer a competitive price for the sawtimber. The obvious solution was to build a sawmill. At the time, the set-aside program was not a limiting factor. However, soon after our new sawmill began operation, the SBA set-aside program was expanded on both forests. Suddenly, 70 percent of all Federal timber sales became virtually inaccessible to us. This was later changed to approximately 60 percent.

The policy for set-aside sales specifies only that sawtimber will be set aside. However, the advent of the combined sale technique has caused a majority of the pulpwood sales to be set aside along with the sawtimber. The most recent sales projections for both the Ozark and Ouachita National Forests indicate that 117.5 million board feet of pine sawtimber and 171,000 cords of pine pulpwood will be sold during this fiscal year 1981-82. It is estimated that 60 percent—70 million board feet—of the pine sawtimber will be sold in set-aside sales and that 55 percent—94,000 cords—of the pine pulpwood will be locked into these sales.

The current SBA definition of small business precludes any paper companies being classified as small businesses regardless of their size in relation to other companies in the same industry. In other words, a paper company that is small is compared to other companies in the paper industry would still be classified as a big business by SBA definition. The result is that the small businesses purchasing pulpwood on set-aside sales are in the sawmill business and do not utilize the majority of the pulpwood timber for their own operations; but most speculative buyers are allowed to bid on and purchase set-aside sales at a price below market values. The pulpwood timber is usually resold for a higher price, and the net affect is that an unnecessary middleman makes an uncalled for profit at public expense. The upcharge that this middleman gets for merely buying and reselling the plywood to the user rightfully belongs to the Federal Government, and hence, the American taxpayer.

We are proposing two changes. First, the SBA should redefine what qualifies as a small business, taking into consideration relative size of a business as compared to others within that industry. In other words, the size of a business is only relative when compared to other businesses with whom it competes. Second, until such time as a redefinition of small business includes some end users of that pulpwood; pulpwood sales, where practicable, should not be included in set-aside sales, since SBA policy for set-aside sales specifies only that sawtimber be set aside.

Thank you for giving me this opportunity to present my views.

Senator **Bumpers**. Thank you, Mr. Dellinger. Mr. Gram?

STATEMENT OF JOHN K. GRAM, PRESIDENT, PUBLIC TIMBER PURCHASERS GROUP, PORTLAND, OREG.

Mr. **Gram**. Thank you, Senator. First of all, I would like to say, it's a great pleasure to actually have a return trip to Arkansas, thanks to the postponed hearing. So, this is my second visit. And I'm enjoying it very much. I'd also like to compliment the staff for their courtesy to me, Alan and Susan, and Dennis Robertson. They have been very informative in helping me understand certain aspects of the Arkansas situation.

The Public Timber Purchasers Group, of which I am the president, is a nationwide trade association based in Portland, Oreg., although I have a suitcase and a travel budget that enables me to get around the country and a variety of the problem areas where there are real problems with the set-aside program.

I have a full statement this morning, which I would like to submit for the record. Obviously, I won't go into a lot of the details here, but I would hope that it would become an important part of the record. And also, my testimony statement, I will try to highlight it so as not to take up too much time, because it is approaching—it's almost the noon hour. So, I would appreciate it if my full statement—my testimony statement could be put into the record along with the full statement.

Senator **Bumpers**. It will also, Mr. Gram.

Mr. **Gram**. The General Accounting Office's study was mentioned this morning, and I'm glad to see that you are familiar with it, Senator. And I would like to point out—I don't want to put the entire study into the record. There is no use in using that much printing time. But I would like to point out that the Small Business Administration and the Small Business Trade Associations first attempted to stop the study before it ever even got started. Then they attempted to reduce the study scope. And then they did everything in their power to stop release of the completed report, including a direct 2-hour personal meeting with the Comptroller General.

So, with that, I think it is solid evidence that the GAO report was indeed exhaustive, and it indeed pointed out the shortcomings and the inequities of the present program and it's administration.

I do want to make it clearly understood to you, Senator, that the Public Timber Purchasers Group and its member companies, do not, and I repeat, do not advocate repeal of the small business set-aside program. We do ask consideration, and serious consideration, of administrative change and modification to the present program, while still providing reasonable assistance and protection, as needed, for the small business community.

One of the things that the General Accounting Office talked about, directly ties into the situation here in Arkansas, on both the Ouachita and the Ozark. And this was the GAO suggestion that procedures for tabulating purchase histories could have possible revision. And that basically is the situation here in Arkansas—GAO suggestion that with the situation with Bibler Lumber Co., who became a large business in the middle of the 5-year period, 1971 through 1975, that at the end of 1975, the end of that 5-year period, that Bibler Lumber Co. purchases as a small should have been credited to large.

Now, on the Ouachita, the small base share has declined somewhat, because of a lack of bidding by the small business community on timber sales that are set-aside. And at recomputation, eventually this does allow the small business share to decline. The same situation is true on the Ozark. However, we feel strongly, and we feel really the root problem of the whole day's discussion, is that on both forests, the small business share percentage is artificially high, and if it was in an area that would take care of the real needs of the small business community, you wouldn't be having a controversial hearing like this, and many of the problems would basically disappear.

I'm going to slip over now, Senator, to the bottom of page 4 of my testimony statement, and I do want to discuss timber sale quality. And I do think it's improved, the selection of sales and the difference of quality. I do think the situation has improved from what I can understand on both forests in the last year or so. But there has been quality problems, or a difference in quality between set-aside sales and open sales on the forests——

Senator Bumpers. Mr. Gram, let me interrupt at this point, just for my own edification, for the record, there is no prohibition against smalls bidding on open sales?

Mr. Gram. There is no prohibition on smalls bidding on open sales, no. That is absolutely correct. In a discussion of timber sale quality comparing open versus set-aside sales on June 29, 1979, the Forest Service chief did write to Arkansas Congressman, John Paul Hammerschmidt, and commented that the GAO report bares out the charge that Ozark set-aside sales were not representative of all sales offered during that period. And he goes on—went on to say that the GAO found that set-aside sales were of better quality, and that this concerns the Forest Service greatly. And this is a nationwide problem, the difference in quality. Not only the General Accounting Office, but study after study has—independent study after study, has come to the same conclusion. Generally speaking, set-aside sales are of higher quality.

Mr. Teague discussed the fact that the studies especially in 1979 and 1980, in this area in Arkansas, that set-aside sales sold at a reduced price in comparison to open sales. That is taking the appraised price and the actual selling price of the sale and comparing open sales versus set-aside sales. Nationwide study after study after study shows that in dramatic fashion, there is a considerable difference in the selling price of open and set-aside sales. And that it amounts to a considerable reduction in revenues to the Federal Government. And I mean tens, of tens of millions of dollars. And this is on top of—that set-aside sales generally often are of superior quality. Otherwise, you could define the present administration of the set-aside program as a system that is giving a guarantee—and generally it's a guarantee of almost more timber then is really necessary—a guarantee of a quantity of timber that is of higher quality at a lower price. And that amounts to be a dollar subsidy to the small business community.

Senator Bumpers. Pardon me for interrupting you, but what do you base that statement on?

Mr. Gram. Well, the General Accounting study for one. Right on the cover of their report it says—this is taken right from the cover of their report, "Set-aside timber sales have been of higher quality, yet have returned less revenue to the U.S. Treasury than open sales."

Senator **Bumpers**. Do they point out any rationale or reason for the small business set-aside being a higher quality?

Mr. **Gram**. They did not go into any rationale or any reason, no, sir. They just stated it as a fact.

Senator **Bumpers**. That seems like an amazing conclusion, not to have any documentation to back it up.

Mr. **Gram**. I believe there is a documentation as far as the statistics go. They didn't go into any reasons why.

Senator **Bumpers**. I'll check with GAO on that.

Mr. **Gram**. I would appreciate it if you would, sir. There has also been a recent—I didn't bring it here, a study that has just come out in the last month or so on the Pacific Northwest, by a forest economist professor at the University of California in Santa Barbara, Walter J. Mead, Dr. Walter Mead. And it was a competition study on the Pacific Northwest, the States of Oregon and Washington. And he comes out and very conclusively says, and he's studied every single timber sale in Oregon and Washington from 1973 through 1979, and he makes the general statement that set-aside sales are of considerable higher quality, and yet they sell at a considerably lower price.

Senator **Bumpers**. Now, you know, to say that suggests that every forest—every forest ranger—chief ranger has deliberately in 142 marketing areas where there are national forests, that in each one of those, somehow or another, the quality is set aside for small business.

Mr. **Gram**. I don't think the Forest Service deliberately does that, no. But I think inherent within the system, the procedures and the way the program is actually administrated, there is a bias in favor of the selection of a superior quality sales for the small business community.

I was going through some of the Forest Service's records for the last 2 years here on the Ouachita, and I find that when I wrote my testimony——

Senator **Bumpers**. You're going to get run out of the State in a minute.

Mr. **Gram**. What did I say, sir?

Senator **Bumpers**. It's the Ouachita.

Mr. **Gram**. I'm sorry. Did I mispronounce it? I've had trouble for the last couple of years. My computer seems to plug in—George Leonard is laughing back there because he caught me on the same mistake a couple of times. I apologize to the people of Arkansas.

Senator **Bumpers**. I just said that in jest.

Mr. **Gram**. When I wrote my testimony, I had the names of some 30 plus different purchasers, names of bidders and purchasers that are active. Actually, it's probably much closer to 40. And I would like to point out, I'm not positive—or I haven't checked the accuracy of the figures that Mr. Rodgers gave. I'll take them at face value because I think he's an honorable gentleman. And he pointed out that what, 45 percent, 26 percent, and then 29 percent were purchased by a single nonmanufacturer. As my memory serves me, a good amount of those purchases were open sales and not set-aside sales. And if my memory serves me correctly, a good amount of that volume was credited to large business as far as the set-aside program goes. And I think probably as I understand, if the specifics were given, you could dig into that yourself.

Now, obviously, a nonmanufacturer is a small business without a mill installation. And combined with the artificially high small business share—and I wanted to make that point very clear, the root of the problem is that you have an artificially excessively high small business percentage. But this invites the possibility of speculative bidding, and of a two-tiered pricing system. The small panel here referred to that earlier, where the large would be paying more on the open market for logs. Well, here again, if you have a guarantee of more timber than the small business community really needs, it's going to develop a two-tiered pricing system. Otherwise, larges are going to have to pay more not only for the sales, but a nonmanufacturer can sell logs at a higher price or a better profit, or maybe even break even in these tough days, to the large business community rather than the small business community. And all of this invites speculative bidding, and it invites, frankly, possible violations of the 70/30 regulation.

Now, the public timber purchasers group understands the reasoning behind the 70/30 regulation. Though we have in the past pointed out that there should be some responsible trading, especially in the West, of species and grade within the 70-percent limitation. But because of the actual operation of the set-aside program in Arkansas, and there again, primarily because of the artificially, excessively high small business share forces a two-tiered pricing system, a speculating business system, the public timber purchase group would not oppose a change in the 70/30 regulation so that 100 percent of all Arkansas small business set-aside sales sawtimber volume would have to be processed in an SBA eligible mill installation. And we would emphasize, this should be coupled with a reasonable mix of quality and size volume sales between open and set-aside sales when there is a triggered situation.

Now, several people before hand, including George Leonard, have pointed out the roundwood problem. When you are into a unit, even once those trees are felled it can be very difficult to make a particular judgment of was that log a sawtimber log or was that log a sawtimber log. And the same thing, is this log a roundwood log. It can be extremely difficult in some cases. So, the roundwood thing certainly does enter into the whole Arkansas situation, as far as possible violations of the 70/30 thing.

The last point I would like to bring out is that the large business community in Arkansas, as nationwide, does business with a large amount of small business contractors, and small business suppliers. Mr. Teague pointed out the number of contractors that they deal with. And when you have an excessively high small business share, you are really penalizing the small business contractors and suppliers that work for a large mill installation. And that fact should be taken into account.

Well, I hope that the testimony of the two gentlemen next to me and my own, that we have raised some question in your mind about the present administration of the set-aside program in Arkansas, and perhaps nationwide. And that there are some specific inequitable conditions that actually exist that effect both small and large business. And I'll be happy to answer questions now, or be happy to supply any additional information or clarification for the record. And I do appreciate your letting an outsider from the far Pacific Northwest participate in these hearings.

[The prepared statement of Mr. Gram follows:]

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TESTIMONY

of

JOHN K. GRAM, PRESIDENT, PUBLIC TIMBER PURCHASERS GROUP

to the

U. S. SENATE COMMITTEE ON SMALL BUSINESS

HOT SPRINGS, ARKANSAS, FEBRUARY 19, 1982

It is a pleasure to be in Arkansas, testifying for the Public Timber Purchasrs Group, a nationwide trade association of the major size forest products industry companies, with several of these SBA defined large companies having mill installations in Arkansas, at this Hearing concerning the Small Business Timber Set-Aside Program.

The testimony later this morning by Waymond Teague of Bibler Lumber Company (Great Northern Nekoosa Corporation), Russellville and J. C. Dellinger of Arkansas Kraft (Green Bay Packing, Inc.), Morrilton, will discuss the excesses and inequities of the present administration of the Small Business Timber Set-Aside Program in Arkansas.

My full Statement, which I submit for the Hearing Record, goes into detail concerning the present Program nationwide. My testimony this morning will hopefully tie together the Program as it operates in Arkansas to the Program as it operates nationwide.

The General Accounting Office CED-79-8 April 5, 1979 Report "Allegations Regarding Small Business Set-Aside Program for Federal Timber Sales" is recommended for your close study and evaluation. Do not stop your study and evaluation at page 10, the end of the formal Report, but continue into Appendix I through IX.

The Small Business Administration, and the small business trade associations, first attempted to stop the GAO Study, then attempted to reduce the Study scope. They then did everything in their power to stop release of the completed Report. Those three attempts, and the SBA subsequent attacks on the GAO Report, confirms that the exhaustive GAO Study and Report did indeed point out some of the short comings and inequities of the present Program and its administration.

It should be clearly understood that the Public Timber Purchasers Group, its member companies, and the entire forest products industry ineligible for the Small Business Set-Aside Program privilege and preference, do not, and I repeat, do not advocate repeal of the Small Business Set-Aside Program. We do ask consideration of administrative change and modification to the present Program, while still providing reasonable assistance and protection, as needed, for the small business community.

The Ozark and the Ouachita National Forests are examples of the discussion in the GAO Report that the procedures for the recomputation of the small business share should provide a more rapid reflection of structural changes among timber purchasers. One possible revision that GAO suggested involves the procedures for tabulating purchase histories during the recomputation procedure. The GAO Report stated:

> "Under present procedures, purchase histories are tabulated according to each firm's size status at the date the sale is purchased. This procedure results in misallocations when firms change size status several years into the five-year recomputation period. Purchase histories for each recomputation period could be tabulated according to the size category of each firm at the ending date of the recompu-

> tation period. Such a revision would provide a more timely reflection of structural changes in the local industry, and still maintain the integrity of the Set-Aside Program's protection of small purchasers."

The change in Program eligibility of Bibler Lumber Company during the five-year period 1971-1975, and the failure of the present Program administration to timely reflect that change, was a primary cause in establishing at the 1976 recomputation what can be described as an artificially high small base share. When the small base share has little relationship to the actual industry structure there will naturally be problems in the selection of set-aside sales, set-aside sales will generally be of higher quality than open sales, and the less competition for set-aside sales will result in set-aside sales selling for less than open sales, returning less revenue to the Federal Government while providing a dollar subsidy for small business, and the possibility of violation of present restriction (70/30) concerning distribution of saw logs from set-aside sales.

On the Ouachita National Forest the original small business base share, from purchase history during 1966 through 1970, was 77%. Bibler Lumber Company purchases as a small business during that time were a major and significant contribution factor to that 77%. With the change in ownership and the move of Bibler Lumber Company from small business to large business, in the middle of the 1971 through 1975 period, set-aside sales were purchased by large business which produced, at the 1976 recomputation, a 62% small business share to be effective during 1976 through 1980. If Bibler Lumber Company's purchases, when they were a small business early in the five-year period 1971 through 1976, with their volume purchases credited to small business, had been credited to large business at the end of the five-year period, the recomputed small business share would have been considerably lower than 62%.

The recent recomputation, following the five-year period 1976 through 1980, produced (with the percentage maintainance of set-aside sales) what is effectively the same 62% (because of the deficit volume carry forward of minus -1.1 MMBF combined with 60% the percentage is effectively 62%). The sawtimber volume sold on the Ouachita during 1976 through 1980 totaled 82.9 MMBF.

While the St. Francis National Forest is in Arkansas, the small business share is 100%, with only 1.1 MMBF sold during the entire five-year period 1976 through 1980, and this Forest will not be emphasized in this testimony.

On the Ozark National Forest, again with Bibler Lumber Company being a major substantial purchaser, the original small business share of 94% has declined to 47%, primarily because of the purchase of set-aside sales by large business. The actual percentage should really be 43% but an Interagency Agreement provision (never less than 50% of the original share) raised it back to 47%. Again, the major point to be recognized here is that if the 1976 recomputation had followed the policy recommended by GAO, the 74% share effective during 1976 through 1980 (from the purchase history of 1971 through 1975) would have been considerably lower, the uneconomic decisions forced on the large business community because of the artificially high small business share would have been eliminated, the cost would have been eliminated to large business of cruising and bidding set-aside sales (where their bid would not be accepted if any small business entered a bid) and the loss of revenue to the Federal Government and the dollar subsidy to the small business community with a guarantee of more than needed quantity of a better quality sawtimber, at a lower price than open sales.

In a discussion of timber sale quality, comparing open versus set-aside sales, on June 29, 1979, the Forest Service Chief wrote to Arkansas Congressman John Paul Hammerschmidt and commented that the GAO Report bares out the charge that the

Ozark set-aside sales were not representative of all sales offered during the same period, that the GAO found that set-aside sales were of better quality and that this concerns the Forest Service and they would attempt to correct any deficiencies found. This communication was Forest Service recognition that set-aside sales generally are of superior quality than open sales.

A sale volume size comparison of sawtimber volume between set-aside and open sales should be of interest to the Committee. On the Ouachita, during the six-month period April 1, 1980 through September 30, 1980, there were 20 set-aside sales for exclusive small business bid, with all containing over 400 MBF (11 of the 20 were actually over 1,000 MBF, with six of those over 2,000 MBF). In comparison, there were 21 open sales, available for bidding by either the small or large business community, and 16 of those were under 400 MBF, with only five having more than 400 MBF (the largest was under 2,000 MBF volume). Out of those 16 open sales with under 400 MBF volume, most were under 100 MBF.

This same condition continued in the six-month period April 1, 1981 through September 30, 1981 where, out of 25 set-aside sales, no sales were under 200 MBF volume and 12 were over 1,000 MBF volume. Of 18 open sales 9 were under 200 MBF with only 5 over 1,000 MBF volume.

When there is a selection of set-aside sales, most analysts would logically consider that it would be appropriate to set more small volume sales aside for small business rather than having most set-aside sales of large volume. Again, it must be pointed out that the small business share percentage is artificially high and this percentage which is out of balance (too high) with the economic dynamics of the area is the real underlying problem in sale selection and the resultant "over supply"for small business---effectively a raw material quantity guarantee of higher quality timber at a reduced price and a dollar subsidy to the small business community.

Ouachita Forest Service records show some 30 plus different purchasers of timber sales, with perhaps half of these not having a mill installation. These many small businesses without a mill installation, combined with the Forest having an artificially high small business share, invite the possibility of speculative bidding, of a two-tiered pricing system (a lower log price for small and a higher log price for large) and possible violations of the 70/30 Regulation. The Public Timber Purchasers Group understands the reasoning behind the 70/30 Regulation, though it strongly suggests that there should be a responsible trading of species and grade within the 70% limitation, but because of the actual operation of the set-aside program in Arkansas, and because there is an excessively high small business share, the Public Timber Purchasers Group would not oppose a change in the 70/30 Regulation so that 100% of all Arkansas small business set-aside sales sawtimber volume would have to be processed in an SBA eligible mill installation. This should be coupled with a reasonable mix of quality and size volume sales between open and set-aside sales.

The Timber Industry 500-Employee Size Standard, which was recently reaffirmed by the Small Business Administration, is singularly inappropriate for the Arkansas small business community where almost every small business company employs around 50 employees or less.

The testimony which will follow will further discuss the differences in sales price on both the Ouachita and Ozark National Forest between open and set-aside sales, even while the selected set-aside sales are the larger volume sales and at times of superior quality. The testimony will discuss the operations in detail, in Arkansas, of the present Set-Aside Program and the specific inequitable conditions as they actually exist. I will be happy to answer any questions now, later in the Hearing or supply any requested data for the Hearing Record.

Before concluding my testimony, I would like to express my appreciation for the excellent cooperation from Senate Small Business Committee Minority Counsel Alan Chvotkin, from Susan Rieff, Legislative Assistant to Senator Bumpers and from Dennis Robertson of Senator Pryor's Little Rock staff.

STATEMENT

OF

JOHN K. GRAM, PRESIDENT, PUBLIC TIMBER PURCHASERS GROUP

TO

THE U.S. SENATE COMMITTEE ON SMALL BUSINESS

HOT SPRINGS, ARKANSAS, FEBRUARY 19, 1982

The Public Timber Purchasers Group is a nationwide trade association of the major forest products industry companies, with several companies having mill installations in Arkansas, organized to monitor and publicize the excesses and inequities of the present administration of the Small Business Timber Set-Aside Program and to achieve change and modification in the present Program to eliminate these excesses and inequities, returning competition and competitive bidding to Arkansas and all Federal timber sales nationwide, and to turn the program direction back to the desirable goal of protecting and aiding truly small business in need of assistance.

Nationwide, and in Arkansas, the Public Timber Purchasers Group asks several basic questions. Who is small? What type of assistance? For how long?

The Small Business Sale Program Policy comes from the Department of Agriculture endorsement (Forest Service Manual Section 2431.11) of the declared policy of the Congress, as stated in the Small Business Act (15.U.S.C. 631) Section 2, which discusses that "The essence of the American economic system of private enterprises free competition...The preservation and expansion of such (full and free) competition is basic not only to the economic well-being but to the security of this nation...it is the declared policy of the Congress that the government should aid, counsel, assist and protect insofar as is possible the interest of the small business concerns in order to preserve free competitive enterprise...to insure that a fair proportion of the total sales of Government property be made to such (small) enterprises, and to maintain and strengthen the overall economy of the Nation." (emphasis supplied)

The Program itself comes from an Interagency Agreement between the Department of Agriculture and the Small Business Administration dated December 29, 1971. The Forest Service Manual Sections 2431.11 through 2431.19--4 provides operational guidelines to USFS field personnel.

One of the great abuses of the administration of the present Set-Aside Program is the virtual veto power that the SBA has over the Forest Service as the Forest Service tries to properly manage the National Forests.

The Forest Service correctly prides themselves on their professionalism. A Forest Service Supervisor, and his Staff, are dedicated foresters with a mandate to manage the National Forest lands. The last thing the embattled Forest Service Supervisor wants is a pitched battle with the SBA Field Representative over the selection of set-aside sales, the recomputation of the small business share or any aspect of the present Set-Aside Program. The veto power of the SBA, because the SBA must concur with every decision involving the Set-Aside Program, is a club over the Forest Supervisor's head. He doesn't want a controversy going to the Regional Office. The Regional Office doesn't want a controversy going to the National Forest Service Office in Washington, D.C.. The Washington, D.C. Forest Service does not want to take it to the Department of Agriculture for final resolution. So there is a natural tendency for the Forest Service to yield to the combined political power of the SBA bureaucracy and the articulate, aggressive, competent program eligible "big-small" mill owners and their trade association representatives.

The Department of Agriculture, through the Forest Service, should have exclusive responsibility for managing the National Forests including the administration of a program to assist qualified small business in need of timber supply. The

Forest Service must have flexibility to maintain a fair program for all industry segments.

SBA has legislated jurisdiction to determine size standards, including the forest products industry (PTPG would recommend that USDA should approve of the size standard effecting the timber program). The SBA should have the responsibility to determine program participation eligibility, enforcement of any processing requirements attached to the set-aside sales, the responsibility to determine program participation eligibility, auditing the Purchasers Analysis and any base share recomputation, the making of small business loans and the providing of necessary and useful educational programs for small business.

PTPG recommends there should be flexibility and provision for adjustments of the small business share to reflect changes in the local timber industry. Also, only the deficit from any past period should be set aside for exclusive bidding by small business and there should be a "need" criteria for the total small business community and the individual company awarded a set-aside timber sale.

Finally, the SBA should adopt a reduced employee size standard. PTPG has long recommended 100 employees coupled with a production standard of 25 MM annually or an equivalent amount of plywood.

THE PRESENT INTERAGENCY AGREEMENT

THE CURRENT PROGRAM ADMINISTRATION

ELIGIBILITY UNDER THE EXISTING SIZE DEFINITION

While supporting a Small Business Timber Set-Aside Program and the Congressional objective of maintaining a viable small business segment in the forest products industry, Secretary of Agriculture Bob Bergland, in an April 24, 1979 letter to a Special Assistant to the President, stated:

> "...USDA has been concerned that the current size standard does not target the benefits of the program at the very small business firms most in need of Government assistance. It also appears that administration of the program may be improved by some adjustments in the procedures prescribed by the USDA-SBA Agreement. A just-released General Accounting Office (GAO) report reached this conclusion. Following review of the GAO report we anticipate discussions to this end with SBA." (emphasis supplied)

The April 5, 1979 General Accounting Office Report (CED-79-8) "ALLEGATIONS REGUARDING THE SMALL BUSINESS SET-ASIDE PROGRAM FOR FEDERAL TIMBER SALES" found:

> "There is no record that SBA considered the factors required by its regulations in setting the timber industry size standard.
>
> Companies with fewer than 100 employees have benefited less from the set-aside program than have companies with more than 100 employees.
>
> The program tends to maintain a static allocation of timber between small and large firms.

Set-aside timber sales have been of higher quality yet have returned less revenue to the U.S. Treasury than open sales."

There is obvious, documented and compelling evidence and real need to revise the present program:

1. The Interagency Agreement between the Small Business Administration and the United States Department of Agriculture
2. The Program administration regulations through the Forest Service Manual
3. The SBA forest products industry Size Standard

On June 18, 1979 (Attachment A) Congressmen Morris Udall, Jim Johnson, and Jim Weaver jointly expressed their concern over the present Set-Aside Program and requested review of the Program to determine if the present regulations should be modified or even replaced.

The SBA's July 30 response (Attachment B) evidences an administrative intransigence, if not arrogance, which cannot be tolerated. A September 17, 1979 Memorandum (Attachment C) was prepared for the Public Timber Purchasers Group by its Washington, D.C. Legal Counsel and it fully answers the SBA's letter considerable rhetoric and some invictive, and spotlights the SBA's repetition of arguments which were refuted in the GAO Report.

Recognizing the very serious questions being raised about the present Program, Agriculture Secretary Bergland wrote to SBA Administrator A. Vernon Weaver on July 19, 1979 requesting a Joint Review of the Interagency Agreement and the present Program to identify changes which may be desirable. Bergland suggested the Review be completed no later than March 31, 1980 (the Review will now be completed in late Spring 1982). Bergland highlighted three areas of concern to his Department that were identified in the GAO Report.

1. Lack of flexibility and provisions for adjustments or share to reflect changes in the local timber industry, i.e., recomputation procedures.

2. Allegations that the benefits of the program are shared disproportionately among eligible firms.

3. Quality differences between open and set-aside sales.

The Forest Service and the Department of Agriculture have also expressed deep concern over the present SBA 500-employee size standard for the timber industry. Former Forest Service Chief John McGuire publicly stated several times that the timber industry size standard was "...probably too high..." and should be coupled with "...other criteria..." (production, sales, net worth, etc.). In 1977 an Assistant Secretary of Agriculture requested the SBA review the timber industry size standard. His request was abruptly dismissed by the SBA.

I. The Present SBA Size Definition Is Unrealistically High, Contrary to Statute, Regulation, Public Policy and Congressional Intent.

For a business to participate in most of the programs administered by the SBA, including a business in the timber industry, it must be "small" as defined in the Small Business Act, as amended (15 U.S.C. 632), and in SBA regulations. The Act gives only a general definition of "small business" but declares that the policy of the Congress is that the Government should assist small business concerns to "preserve free competitive enterprise." The Act states that a small business concern is "one which is independently owned and operated and which is not dominant in its field of operation" and authorizes the SBA to expand on the definition by the use of other criteria, including number of employees and production and dollar volume of business. SBA has exercised this authority in the timber industry by defining (re-affirmed in late 1981) a "small business" as one having no more than 500 employees. The definition does not include any production or dollar volume criteria.

The 500-employee standard is unrealistically high and was so recognized almost as soon as it was established. The 1970 Report of the Public Land Law

Review Commission[1] had the following comment on the program:

> "The Commission believes that the United States should assure that small firms and dependent firms be given some opportunity to obtain public land timber. The current definition by the Small Business Administration of small firms as having less than 500 employees sets this limit at an unrealistically high level for the timber industry, where most firms have fewer employees.
>
> *Accordingly, the size limit for this industry in terms of qualifying for Small Business Administration assistance should be flexible enough to recognize actual conditions and to give real advantages to small firms when conditions warrant.*" (emphasis in original.) [2]

The inappropriateness of the 500-employee size standard[3] is clearly evidenced by reference to the makeup of the forest products industry. A comprehensive study of that industry and the economic factors relating to the size standard was completed by Wesley Rickard, a respected forest economist, in 1975. It was presented to the SBA at size standard hearings held in the late summer of 1975 and again in 1980. It is the only comprehensive study ever undertaken of the timber industry size standard.[4] The Rickard Study provides dispositive evidence that a 500-employee size standard is wholly inappropriate. Rickard found that all the economic data pointed toward the need for a drastic reduction in the size standard. Rickard's exhaustive economic research showed:

a. 100- to 500-employee companies are among the nation's largest forest products firms and are almost equally represented in a list of the nation's 100 largest lumber producers (among some 8,000 total companies),

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[1] The Commission was established to study the federal land laws.

[2] The economic study accompanying the Report recommended that the SBA program include only companies with 100 or less employees.

[3] The 500-employee standard was adopted by the SBA without factual research or study as described in the GAO Report.

[4] The Rickard Study was described as "very impressive" and "very well-documented" in 1975 Senate hearings. See *Hearings on Procurement Assistance Program of the SBA Before Senate Select Committee on Small Business*, 94th Cong. 1st Sess. at 254, 255.

b. 100- to 500-employee forest products companies have operating characteristics similar to those with more than 500 employees.

c. The vast majority of lumber mills are truly small. 79% in 1970 employed fewer than 20 people. Most of these mills are one-mill companies.

d. Mill failures and business attrition occur almost wholly in the truly small category, i.e., less than 100-employee size class. There is strong evidence that failure and attrition are concentrated well below the 100-employee level.

The most recent industry figures confirm the conclusions reached in the Rickard Study. Out of the country's top 100 lumber producers in 1977, ranked by Forest Industries Magazine from among 1129 reporting companies with a total of 1677 mill installations, 41 SBA program-eligible companies were in the top 100. 1978, 1979 and 1980 industry statistics were similar. In general, companies in the top are well-managed and well-financed or they would not have attained this size. Companies of 100-500 employees have dominated the purchase of small business set-aside sales where they have chosen to enter the bidding competition. Of the 119 firms reporting 1977 production of over 50 million board feet, 53 (45%) are eligible for small business set-asides.[5/] The growth of the "big-smalls" which purchase the majority of the set-aside volume at the expense of the truly small companies of under 100 employees is shown by comparing these 1975 and 1977 figures: in 1977, 9 companies eligible for set-asides reported production of over 100 million board feet in comparison with 1975 when only one reported production at that high level.

It is clear from the foregoing that the excessively high 500-employee definition opens up to some of the country's largest producers the timber allocation preference which the Congress meant to restrict to truly small business. In actual practice, the program is administered primarily for the benefit of "big-

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[5/] This is to be compared with 1975 figures which showed that 35% of the firms reporting production of over 50 million board feet were eligible for the SBA program.

small" firms and is, in fact, oppressive to both the truly small firm and the ineligible large firm, giving unfair timber supply preference to a segment of the industry which is most competitive, efficient, and which needs no such government support and subsidy.

Such a state of affairs clearly discourages (indeed penalizes) natural economic growth, fails to precisely identify those businesses needing federal assistance and generally is inadequate to provide the social benefits intended by Congress.[6] The 500-employee standard also flies in the face of the SBA Size Standards Policy set out at 13 C.F.R. § 121.3-1 (b) (2) (1978):

> "Size standards policy. (i) The fundamental purpose of Small Business Administration assistance is to preserve free competitive enterprise by strengthening the competitive position of small business concerns.
>
> (ii) It is the Small Business Administration's view that, in the absence of proof to the contrary, there is a segment of each industry wherein concerns by reason of their small size are at a competitive disadvantage. Therefore, the definition of small business for each industry should be limited to that segment of the industry struggling to become or remain competitive. (emphasis supplied)
>
> (iii) Smaller concerns often are forced to compete with middle-sized as compared with very large concerns. In consideration of this fact, the standard for each industry should be established as low as reasonably possible. It should be lowered in any case where the SBA determines that a few concerns under the size standard umbrella have, because of their size, gained undue competitive strength as compared with other concerns under the umbrella. (emphasis supplied)
>
> (iv) It is the Small Business Administration's view that concerns which, with or without assistance under the Small Business Act, have grown to a size which exceeds the applicable small business size standard should compete for Government contracts not reserved for small business concerns or should seek commercial markets in the same or related fields. Under such circumstances small business concerns should not rely on continuing assistance under the Small Business Act from the cradle to the grave, but should plan for the day on which they become other than small business and should be able to compete without assistance." (emphasis supplied)

The 500-employee size standard meets none of these policy requirements.

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[6] In order to provide relief to small timber operators (25 or less employees), a test program (Special Salvage Timber Sales) as been initiated. The impetus for this was legislation introduced in the House of Representatives in 1978. The fact that such a program is necessary is the most probative evidence of the inadequacy of the present size standard.

An August 9, 1978 GAO Report (CED 78-149) "WHAT IS SMALL BUSINESS? THE SMALL BUSINESS ADMINISTRATION NEEDS TO REEXAMINE ITS ANSWER", summarized the result of its survey of the SBA definitions of small business and criticized the size standards which control eligibility for Federal small business assistance programs 7/ stating:

> "Under Small Business Administration regulations, size standards should channel assistance to firms competitively disadvantaged by being small. But standards have been developed without apparent consideration of the size of businesses most in need of Federal assistance. The standards include virtually all firms in some industries.
>
> The Small Business Administration needs to reexamine its size standards to provide Federal Assistance for appropriate small business firms."

The April 5, 1979 GAO Report (CED 79-8) titled "Allegations Regarding The Small Businesses Set-Aside Program for Federal Timber Sales" went into critical detail concerning both the SBA establishment of the existing timber industry size standard and the actual program results with this size standard.

The Report stated:

> SIZE STANDARD FOR DETERMINING PROGRAM ELIGIBILITY
>
> "We reviewed two allegations concerning the size standard that the Small Business Administration used to determine eligibility to participate in the set-aside program. One allegation is that the Small Business Administration set the current timber industry size standard without studying industry conditions. Implied in this allegation is that the current size standard has no factual basis and is not justified.
>
> Small Business Administration regulations specify several factors to be considered in formulating industry size standard. However, Small Business Administration files contained no record that these factors were considered when the agency increased the size standard for the timber industry in 1964 from 250 employees to 500 employees. Futhermore, current Small Business Administration officials, as well as a former official who was familiar with size standard at that time, were unaware of any study made to justify the increase.
>
> The Small Business Administration reviewed the 500-employee size standard in 1966 and again in 1975. On both occasions, the agency decided to retain the standard. The 1966 review was made to determine whether the increase to 500 employees had adversely affected firms with less than 250 employees or improved the competitive position of firms with 250 to 500 employees. The report on this review recommended retaining the 500-employee standard, but it stated that

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7/ This report did not include an analysis of the timber industry size standard.

the agency could not determine whether an increased size standard improved the competitive position of firms with 250 to 500 employees. The report cautioned the Small Business Administration to make sure that the size standard did not overburden very small bidders.

In 1975 the Small Business Administration held public hearings on whether the 500-employee criterion should be raised, lowered, or retained. Following the hearings, a notice was published in the Federal Register announcing that on the basis of evidence submitted during the hearings, the 500-employee standard would be retained.

In May 1977 the Department of Agriculture's Assistant Secretary for Conservation, Research, and Education wrote the Administrator of the Small Business Administration requesting another review of the timber industry size standard. The Assistant Secretary was concerned that under the set-aside program, quite a large segment of the small business community was not being provided access to a fair proportion of national forest timber sales. He stated that the larger firms qualifying as small businesses under the present 500-employee size standard effectively barred firms with fewer than 200 employees from participating. He believed a joint review of the size standard for participation in the timber set-aside program was desirable.

In June 1977 the Director of the Small Business Administration's Size Standards Division responded to the Assistant Secretary and dismissed the need for a joint review. The Director stated that the issue was very carefully considered at the 1975 public hearings on the size standard, a majority of those attending the hearings had favored retaining the 500-employee standard, and that the Small Business Administration had decided to retain this standard.

The other allegation we examined is that the current timber industry size standard of 500 employees is so inclusive that firms with 100-500 employees receive a disproportionately large share of benefits compared to those firms with fewer than 100 employees. Many smaller size firms in the timber industry are engaged in logging and they are alleged to receive few, if any, benefits from the set-aside program.

Our analysis confirmed that companies with less than 100 employees, and especially those with 25 or fewer, have used the set-aside program less than companies with more than 100 employees. Specifically, the analysis showed the larger companies were able to obtain a greater proportion of their public timber purchases through set-aside sales than the smaller firms. This happened because the smaller size companies did not compete as successfully for set-aside sales as they did for open sales. We also found that logging firms, in comparison to firms that mill timber, had a particulary difficult time competing for set-aside sales. Although firms with less than 100 employees used the set-aside program less than firms with over 100 employees, an earlier study suggested that the smaller firms may need the set-aside program most because they are the firms that most often fail."

Additional details on the existing timber industry size standard can be found in Appendix II of the GAO Report, pages 8 through 27 of the appendix.

LABOR UNION POSITION ON SIZE STANDARD

R. Dennis Scott, Economist, International Woodworkers of America, commented in testimony to the House Agriculture Committee, Subcommittee on Forestries in Portland, Oregon, April 20, 1979, on the 500-employee size standard used by the SBA in determining eligibility for bidding on set-aside sales:

> "The IWA does not consider forest industry establishments that employ from 250 to 500 persons to be in the small category. Obviously, the SBA has not properly researched the structure and organization of the forest products industry in setting the 500 employee limit. Although considerable concentration has been occurring in the last decade, the industry today is still characterized by a large number of small producers. If truly small producers are to be protected, the 500-employee standard should be reduced to at least 250 and probably as low as 100. In our view, the figure should not be dropped so low as to eliminate companies with manufacturing facilities from bidding. If the figure were set below 100, for example, many small sawmills and plywood mills would be excluded. The sales would, instead, go to non-integrated independent gypo loggers with little assurance the timber would be processed in a so-called small facility (up to 30 percent may be sold to large firms). The opportunities for avoiding the regulations requiring 70 percent to be sold to small producers are much greater when non-integrated logging companies are winning the bids. The emphasis should be on creating manufacturing employment within the region rather than merely reselling to an integrated firm that performs minimal processing requirements (making 2 cuts for a cant) in order to export the material offshore.
>
> To assess what in reality constitutes a "small" operation in the forest products industry, several sources are useful. The U.S. Department of Commerce collects data every ten years on the number of establishments by employment size in all industry classifications[1/]. As of 1967 the Department counted 10,271 sawmill establishments. Only three percent of these units employed 100 or more workers. In plywood, the average mill size was somewhat larger with those employing 100 or more accounting for 37 percent of the total 667 mills counted. Still, the majority of independently owned plywood plants employ less than 100 people.
>
> Another source of information is the annual directory of lumber companies produced by Forest Industries magazine[2/]. The 1977 listing carried 1,129 companies. Among the top 100 largest producers, 41 employed 500 or fewer people. In other words, 40 percent of the largest companies in the industry are defined as small by the SBA timber set-aside program.
>
> The SBA definitions for small bear little resemblance to the realities of the industry structure. Furthermore, the GAO Report, cited above, points out that the Primary beneficiaries of the set-aside allocation are the firms in the 100 to 500 category -- not the truly small firms employing less than 100.

1/ 1967 Census of Manufacturers, U.S. Department of Commerce, Bureau of Census, Volume II, Industry Statistics, Part I, Major Groups 20-24.

2/ Forest Industries, May 30, 1978.

As the Northwest approaches the period when we're experiencing a decline in the merchantable timber harvest from corporate forest lands, documented by several studies[3], the competition for available timber will rise proportionately. In order to protect the truly small firms and make the restricted supply available on a more widespread basis, the IWA feels that sound set-aside policy would lead to a reduction in the employee definition size.

We have also witnessed questionable practices carried out by firms desiring to remain under the 500 limit. Company sales, transfers, front organizations and reorganization schemes have been used to preserve the right to bid on SBA set-asides. This has greatly reduced the credibility of the program and brought further into question the use of the 500 employee standard. A reduction of the figure wouldn't eliminate the problem, but it would make it more difficult to manipulate operations and make it less profitable since the amount of production would be much reduced with a 99-member work force as opposed to a crew of 499."

II. The Present Program Must Be Modified:

The only legitimate purpose for a set-aside program is to provide small timber processors with some protection against the vicissitudes of free competition. This is accomplished by establishing certain artificial barriers to the operation of normal economic forces. A rational program would produce only such adjustments to the economics of the timber industry as would permit otherwise viable small businesses to servive temporary timber shortages and other brief market irregularities.[8] It was never intended that the SBA program should effect a major displacement in the free market for timber or to provide absolute protection for small business.

The SBA program originally was based on need. Set-aside sales were scheduled only when and where small business could demonstrate need for perferential and exclusive access to government timber based on economic reasons that precluded open competition with large companies. Operationally, a request for such a sale would be made to the Forest Service, either by small business or the SBA acting on behalf of small business. The timber-selling agency would then determine whether the set-aside was justifiable and compatible with the forest management plan.

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[3] Outlook for Timber in the United States, USDA Forest Service, Report No. 20, 1973. Timber for Oregon's Tomorrow, John Bueter, Norman Johnson, Lynn Scheurman, School of Forestry, Oregon State University, Research Bulliten No. 19, January 1976.

[8] Under the original SBA program, a small business was defined as one having fewer than 100 employees and only these companies were eligible.

In striking contradistinction, the present program guarantees to small business a stated percentage of federal timber sales, based on 1966-1975 history of purchases by the small business sector. The radical changes of eliminating the showing of need as the central criterion for participation in the set-aside program and adopting an automatic triggering mechanism to maintain the percentage regardless of changes in economic or social conditions have completely altered the character of the original program.

The rationale for the present program is nowhere spelled out. It allegedly fills an unproved need to retard a decline in the number of small forest products companies which has supposedly been caused by the competitive practices of the big companies. Those advocating the present program have maintained that this decline is due to the inability of small companies to buy sufficient public timber in competition with the big companies. The present program allegedly was designed to halt this decline.

There is admittedly no factual basis to support this thesis. The SBA admits that it made no investigation of this decline to find out whether its premise was correct. It openly admits and has stated that there may be other factors involved, but until now it has repeatedly refused to do or commission an independent factual study.[9] Available census data clearly indicates that the casualties in the past have been almost exclusively among companies with less than 50 employees. In fact, there are virtually no instances of companies from 100 to 500 employees going out of business.

Whatever its rationale, it is clear that the present program has not helped truly small businesses and, by discriminating against companies with more than 500 employees, it has forced some mills to close. Large companies will not subsidize an operation which is unprofitable nor will they upgrade mills to keep them operationally efficient when the mill is discriminated against by government action making a substantial part of the potential timber supply unavailable.

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[9] Senate Bill (S.918) could authorize a study to define and describe the forest products industry and in particular to define and describe that portion of the forest products industry which consists of small businesses and to present the Senate Select Committee with several policy alternatives. The original legislation directed that particular attention should also be given to an analysis and review of the reasons for failure among firms within the forest products industry.

The present program, as now constituted, is founded on "base average share", representing the percentage of timber purchased by small business during the period 1971-1975 in a given market area. Under the program, this share was computed in a wooden, automatic fashion and did not reflect any change in size classification of a purchaser or change in the area's installed capacity. The present base average share bears little relationship to the economic situation as it exists today. Bibler Timber Company, Russelville, Arkansas, and its change from program eligible to program ineligible, has directly effected the program imbalance on the Ouachita and the Ozark National Forests. In some areas of the U.S. there are no small companies at all and set-aside sales are purchased by companies coming in from outside the normal working circle and transporting these logs a great distance. Transportation costs are absorbed in the reduced stumpage costs because of limited competition. An artificially high small base share only serves to exclude mills withing the area which happen to be owned by big companies. This results in a real disservice to those communities which depend on these mills for their economic well-being.

The triggering of set-aside sales at the conclusion of any six-month period, if for any reason small business does not purchase 90% or more of its base average share, requires a set-aside sales program for the next six-month period. This triggering of set-aside sales is automatic, whether the sales are needed by small business or not, and is based on a fixed percentage of a fluctuating volume of timber put up for sale in any given area. Any deficit remaining after this period is carried over to the following period (plus the base share), and so on ad infinitum. The present program steadily compounds the inequities established by the often artificially high small base share which under the present inflexible program, can't be changed in a timely manner.

REDUCED FEDERAL REVENUE

When a set-aside program is triggered, the program requires the SBA and the Forest Service to reach agreement on the sales to be selected. On its face, this is a sensible arrangement -- the SBA seeing to its clients' needs -- but, in actual practice, it has developed that set-aside sales are of superior quality to other sales.[10] A report published March 13, 1979, analyzing Forest Service sales data for Western Washington and Oregon and comparing differences in open sales and set-aside sales, found that set-asides were of higher quality than open sales.[11] It was also found that, in one of the areas studied, "set-aside sales resulted in significantly lower prices suggesting that the Government is making an implicit payment of $15.42 per thousand board feet to successful small groups."

At House Agriculture Forestry Subcommittee hearings in Portland on April 20, 1979 and at Select Senate Small Business Committee hearings in Washington, D.C. on May 7, 1979, respected Forest Management and Forest Economic Consultant Wesley Rickard gave detailed testimony (attachment D) on a southern Oregon and northern California market study of log prices indicated by stumpage sales from 1972-1976 on six national forests. The indicated log values were by specie, bid price plus logging costs indentified in the appraisal.

Rickard testified, with exhaustive detail in his statement, that "...in almost all cases the SBA set-aside sales sold for substantially lower prices than the unrestricted forest service sales".

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[10] The practice has been for SBA personnel to be extremely active in the selection of sales for set-asides, usually after consultation with the benefited small businesses and/or their trade association representatives.

[11] Richard W. Haynes, A Comparison of Open and Set-Aside Timber Sales on National Forests in the Douglas-Fir Region (1978). This report was released by the Forest Service (Pacific Northwest Forest and Range Experiment Station) and will be published in an issue of Land Economics.

Rickard concluded "...it is...clearly apparant that the log prices indicated by US Forest Service stumpage sales for the major species were substantially lower on set-aside sales than on unrestricted sales, in amounts ranging from a minimum of $10 per MBF to well over $100 per MBF in some cases. Thus it is clear from this data that set-asides prices were significantly lower than unrestricted timber prices under comparatively similar circumstances of competition."

The April 5, 1979 GAO Report conclusively proves that set-aside timber sales of higher quality return less revenue to the U.S. Treasury than open sales.

The report states:

> "Revenues Received From Set-Aside and Open Sales
>
> The allegation we reviewed was that set-aside timber sales have been of higher quality yet have returned less revenue to the U.S. Treasury than open sales. (Quality of sale is characterized by such factors as sale size, difficulty of logging the timber, volume and quality of timber to be harvested, and distance timber is hauled for processing.) To compare the quality and revenues returned from set-aside and open sales, we used a methodology developed by the Forest service. Quality of timber sales was defined in terms of 11 sales characteristics which are quantified on Forest Service timber sale reports. Sale characteristics of the open and set-aside sales were tested using statistical techniques to determine if the characteristics (quality) of the sales were different. Then, taking quality differences into account, revenue differences were tested again using statistical techniques.
>
> We found set-aside sales were numerous enough at 58 of the 132 national forests included in our review and at all 5 of the Bureau of LandManagement districts to make meaninful comparisons. At 50 of the 58 national forests tested, we found set-aside sales were of higher quality than open sales. At 48 national forests, set-aside sales returned less revenues than open sales. At three of the five Bureau of Land Management districts, we found set-aside sales were larger and considered more desirable than open sales yet returned less revenues than open sales."

The Report appendix IV has seventeen pages of tables and detailed illustration starting at page 43 through 60 of the Reports appendix.

The superior quality of set-aside sales is to be considered in connection with the findings of several economic studies which show that firms purchasing set-aside sales do so at a better price, comparing the appraised price and the actual purchase price. A 1977 University of Washington doctoral dissertation by Ronald N. Johnson, Competitive Bidding for Federally Owned Timber, clearly shows that the set-aside program has resulted in lower returns to the Forest Service, stating: "The empirical results also indicate that the preferential treatment bestowed upon smaller firms...has had a negative effect on the prices received for national forest timber" and that the set-aside program restricts "the ability of the Forest Service to extract maximum returns..."

Recently released Mead Competition Study, ("The Effectiveness of Competition and Appraisals in the Auction Markets for National Forest Timber in the Pacific Northwest" by Walter J. Mead, Mark Schneipp and Richard B. Watson, September 30, 1981 USFS Contract No. 53-3187-1-43 and PSWG-34.) clearly shows that in the Pacific Northwest (Oregon and Washington) the SBA Timber Set-Aside Program reduces competition, reduces revenue to the U.S. Treasury, yet these restricted small business sales tend to be of superior quality than open sales with lower logging costs and a higher selling value lumber/plywood end product. This study backs up what the Public Timber Purchasers Group repeatedly stated...Program is anti competitive, it does not enhance free competition or provide for full competition and is actually counter to maintaining and strengthening the overall economy of the Nation. The Program provides a subsidy, beyond the preference guarantee of quality and quantity, of a staggering nationwide dollar amount for "big-small" mill owners while penalizing other small businesses. Mead concludes that, generally, the market for National Forest timber is competitive, there is no control of stumpage prices by private owners, but that an important factor found restricting competiton for National Forest timber is the barrier imposed by the Small Business Administration (SBA) under the Small Business Timber Set-Aside Program administered by the Forest Service with the necessity of SBA concurrence on all Program details.

The Study suggests that competitive performances could be improved by repeal of the legislation that established the SBA Set-Aside Program. In the Mead Competition Study a direct revenue loss to the Federal Government (and to the Counties) was found to be associated with the set-aside sales during the period 1973-1979 which, when expressed in 1981 dollars, amounts to $108 million dollars, just from the National Forests in the Pacific Northwest. Set-aside sales were found to have had a large and negative impact on overbids relative to open sales of comparable quality and size. The Public Timber Purchasers Group has long contended that set-aside sales, not taking into account their higher quality, sell at a reduced price providing a dollar subsidy coupled with the quality-quantity preference guarantee.

The Study finds the SBA Set-Aside Program to be a factor reducing competition for those sales selected as set-asides and causing a substantial reduction in bids for those set-aside sales overall, resulting in substantial reductions in revenues to the Federal Treasury and in turn County Government.

Set-aside sales in comparison to open sales have the desireable characteristics of large volume, greater contract length, lower logging costs and a higher end product lumber and plywood selling price because of the higher quality timber.

This Mead Study is further confirmation of the conclusions contained in the GAO Report, the Haynes Paper, the Rickard Revenue Study, and a study by Dr. Ronald N. Johnson. Set-aside sales are of superior quality yet are sold at a reduced price in comparison with open sales.

The differences in revenue (the selling price) between Open and Set-Aside Sales in Arkansas is dramatically illustrated on the Ouachita and Ozark National Forests.

LANE COUNTY OREGON STUDY

The consequences of the present program, with its inflexible approach (largely forced upon the Forest by the SBA), with an excessively high employee size standard, and with an artificially high base share in many markets, are underscored in a 1977 "Economic Study of Lane County, Oregon" published in May 1978, prepared under the Resource Development Internship Program of the Western Interstate Commission for Higher Education and sponsored by the Public Timber Purchasers Group, which showed:

1. In Lane county, attrition has been most significant among firms employing less than 100 workers and with lumber production of less than 25 MMBF annually.
2. The meaning of "small" as it is applied to competition for public timber under the SBA program is strained. A few medium-sized firms in the 100-500 employee size class have dominated SBA set-aside sales; less than 20% of the SBA-eligible firms in Lane County have purchased over 50% of the SBA sales.
3. The SBA timber set-aside program can create an incentive among SBA firms to avoid competitive bidding, which could trigger the SBA program.

In summary, all of the relevant evidence demonstrates that the present program is so permeated with artificiality, so skewed in favor of maintenance of the staus quo as of 1970, regardless of any other consideration, that it is hardly surprising that it has the serious adverse effects described herein. Some real changes must be made.[12/]

[12/] In a letter to the Public Timber Purchasers Group, Lloyd C. Irland, the author of a 1976 study of the forest products manufacturing industry stated: "The SBA set-aside program is one of the least studied and least understood facets of the Forest Service timber sale policy. It is amazing that so little careful work has been done on it. While I believe that public timber policy might legitimately provide for ways to offset disadvantages of small timber buyers which are solely due to their small size, I am not convinced that the SBA program is currently administered in the best way to accomplish this goal."

One of the basic arguments urged by advocates of the present program is that it is needed to avoid industry concentration. The facts do not support this contention as the forests products industry has a low concentration ratio.

Economists often use the extent of concentration to measure the competitive structure of an industry. The concentration ratio, the cumulative market share of the largest four or eight firms, is the most common measure of concentration. For example, the 8-firm concentration ratio is a proportion of total industry output that is produced by the 8 largest in the industry. A concentration ratio is relevant to the issue of bigness per se and control of the industry. It has the advantage of being directly comparable to commonly available data for a broad range of industries.

Economists Walter J. Mead (1965) and Lloyd C. Irland (1976) have used concentration ratios to assess the competitive structure of the forest products industry. The 1976 Irland Study[13/] used concentration ratios to demonstrate that giant firms do no "control" timber-based industries in North America". Mead, in his study of the lumber market, found that while concentration increased from 1947 to 1960, these changes did not modify the highly competitive structure of lumber markets.

In 1970, an average of 40% of the value of all 420 U.S. manufacturing industries shipments was accounted for by the four largest companies. That is, the average firm concentration ratio was 40%. The lumber industry ranks particularly low relative to other industries; in 1970, only 9.4% of other industries had a lower concentration ratio. In 1975, the four largest lumber producers showed 16.5% value of shipments. The eight largest producers showed 22.6% and the 20 largest producers 35.6%. Similarly, the 1977 Forest Industries magazine review of lumber production showed that the top 25 companies accounted for 41.9% of U.S. production. Taking out two companies that purchase virtually no public timber, the top 25 only accounted for 31.7% of U.S. production.

[13/] This study was reproduced, in part, in the June 1976 and August 1976 issues of Forest Industries magazine.

An abstract of the 1976 Irland study showed as follows:

> "The facts of the economic structure and performance of U.S. forest industry are poorly understood. This is especially unfortunate when forest industries are under heavy criticism from some portions of the public. The fact that the forest industries include a number of large corporations that rank high in Fortunes's 500 has led some to the impression that the business is dominated by grasping monopolies capable of fixing prices and reaping high profits from their market power.[14] Such views do not reflect the reality of the wood business today."

III. Importance of Access Nationwide To Federal Timber

The federal timberlands constitute nationwide a significant part of the timber resource base available to the forest products manufacturing industry. Particularly is this so with respect to softwood lumber used in housing. As of 1970, the National Forest System contained in excess of 50% of the nation's softwood inventory of sawtimber size.[15] The federal timberlands have been supplying approximately 28-30% of the softwood timber harvested nationwide in the United States in the last 15 years and have the capability of furnishing a far greater amount. In the South and Arkansas there is a heavier dependency on private timber in comparison to Federal timber. It has been predicted that problems of nationwide timber availability are likely to be most critical for softwood sawtimber used for lumber and plywood in housing.[16] All size segments of the forest products industry large, medium and small -- have now and will continue to have a dependence on the availability of federal timber.[17]

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[15] U.S. Department of Agriculture, The Outlook for Timber in the United States, pp. 29, 32 (1973). Another 12% is in other public ownership. Id. at 32.

[16] Id. at 3

[17] The Forest Service recently testified that major companies have substantial dependency on national forest timber in their Pacific Northwest operations, as follows:

Bohemia	50%
Bosie-Cascade	60%
Louisiana-Pacific	90%
Medford Corporation	85%
Simpson Timber Co.	75%
SWF Plywood	95%
Willamette Industries	50%

The availability of federal timber to all segments of the forest products industry is dramatically affected by the administration of the program. In fiscal year 1978, some 667 set-aside sales of federal timber were awarded to small business. These sales involved some 2,507 billion board feet of timber with sales values of some $423.4 million. Additionally, small business concerns purchased some 3,333 billion board feet at "open" sales. Thus, out of a total of some 10,845 million board feet of federal timber offered for sale, small business acquired 5,840 billion feet, or 53.8% of the total. These figures are to be contrasted with the original base share of 44.4%. By way of further illustration, small business is guaranteed some 52% of the timber sales volume of Forest Service Region 6 (Oregon and Washington), the largest Forest Service harvesting area and one which serves as the timber resource base for many large business operations. In Arkansas the three market areas guarantee small business 62%, 74%, and 100% respectfully. During fiscal 1978 some 1,178 billion board feet was reserved for small-business bidding only. Percentages such as these demonstrate the real likelihood that these areas and others like them will soon become the private preserves of small business.

IV. Operational Aspects of the Program

The present program[18] has the following principal operational features:

1. The program was originally premised upon a "base average share", representing the percentage of national forest timber purchased by small business during the five-year period, 1966-1970.[19] The base average share is to be

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[18] The present program is administered pursuant to an Interagency Agreement between the SBA and the USDA-USFS. There is a similar agreement between SBA and the Department of Interior.

[19] The SBA program, while national in scope, is administered by "market area", which generally coincides with a forest.

recomputed at intervals of not more than five years. The present base average share is based on small business purchases during the 1971-1975 period.

2. The present program provides that set-asides will be required when there is an accumulated volume deficit of ten percent of the small business share for the past six-month period; the small business share for the current period is sold as set-asides, while the accumulated deficit volume is to be planned for sale during the ensuing twelve-month period. The triggering mechanism is automatic without regard to timber need.[20]

3. The present program has been designed to assure that the "fair proportion" of federal timber volumes sold thence-forward will either (a) remain essentially the same of (b) will increase above the initial small business base average share determined as of the 1966-1970 five-year period. This is accomplished by a number of devices:

> A. Changes in size status (e.g., from "small" to "large") during any five-year period after 1970 are ignored until the next five-year period. Thus, the small business base average share remains the same during the next five-year period, regardless of changes in industry structure, no matter how major. As a result, continues purchases of federal timber sales in approximately the same annual volumes previously by a business which has changed status from small to large would tend to trigger more frequent set-aside sales, maintaining a constant, albeit artificial, small business share.
>
> B. The small business share increases in successive five-year periods whenever small business collectively purchase volumes greater than the

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20/ For instance, if small business has a backlog of timber under contract or access to other timber so that no bids are made on national forest timber during a six-month sales period, the triggering mechanism will require the scheduling of set-aside sales. This obviously discourages small business self-sufficiency and makes the national forests a small business preserve.

base average share for a given five-year period. This is easily accomplished since small businesses are virtually guaranteed the base average share for that five-year period through the set-aside device and are free additionally to purchase sales not sold as set-asides.

C. The small business base average share can be reduced only under a very special combination of circumstances - when (1) in the final six months of a five-year period no set-asides have been triggered, and (2) during the preceding four and one-half years small businesses have not accumulated volumes in excess of their base average share sufficient to offset the portion of the base average share they fail to purchase during the last six-month period.

D. No computation of the small business base average share for a five-year period after 1970 will be permitted to result in a reduction of the base average share to less than 50 percent of the initial base average share computed for the 1966-1970 period. This floor is absolute and this minimum share remains even if there are no small businesses in the marketing area.

The present program was delibertely designed: (a) to increase the small business share of federal timber purchases by ignoring economic realities in the industry and (b) to change the economic structure of the industry by discouraging and penalizing legitimate and necessary expansion and growth. These goals are to be achieved by:

(1) Restricting sales and exchanges of timber acquired in the purchase of set-asides;[21]

(2) Discouraging the sales of small businesses dependent on federal timber to large businesses;

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[21] A set-aside sale purchaser can sell or trade no more than 30% of the timber so acquired to a non-small business, regardless of utilization, wasted transportation energy, or economic considerations.

(3) Discouraging growth and expansion either into related or unrelated business, for fear of exceeding the 500-employee size standard and of losing the right to purchase set-aside timber;[22]

(4) Freezing the industry by location as well as structure since large business is effectively precluded from installing or acquiring new facilities in areas where the small business share is already a substantial proposition of the federal timber sold in that location;[23]

(5) Restricting competition by deterring large businesses from bidding upon non-set-aside sales for fear of triggering additional set-aside sales.

V. The Program Has Serious Anticompetitive Effects.

This jointly administered SBA program[24] creates major industry dislocations which reduce competition on set-aside sales, increase competition on unrestricted sales, make mandatory allocations of a scarce natural resource, freeze industry structure in perpetuity without regard to economic or social change and stifle natural economic growth.

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[22] If a business is approaching the size standard limit and is dependent upon federal timber, it will naturally resist taking any action which will cause it to exceed the size standard. This is contrary to the stated policy of the SBA:

> "(S)mall business concerns should not rely on continuing assistance under the Small Business Act from cradle to grave, but should plan for the day on which they become other than small business and should be able to compete without assistance." 12 C.F.R.§ 131.4-1(b)(2)(iv)(1976).

[23] A large business is obviously not going to install a new facility in an area where reliance must be place upon federal timber for raw materials and where small businesses are effectively guaranteed acquisitions of much of that timber.

[24] While the program is ostensibly a joint one and, by law, the timber-selling agency has ultimate decision-making authority, the SBA has clearly assumed the dominant role. It has gone so far as to maintain that it may exercise a veto over any action by the timber-selling agency deviating from the interagency agreement, even though the statutory authority for the program vests final decision-making with the Secretary of Agriculture.

The inflexible program administration, where the disposal agency must have SBA concurrence, has resulted in (a) waste of timber resources, (b) a large expenditure of money and scarce energy in the unnecessary transportation of timber,[25/] (c) needless restriction of timber supply to the extent that otherwise efficient manufacturing operations are forced to curtail production or close, (d) government subsidy to a privileged segment of the timber industry which does not deserve or require any such preference or protection, (e) encouraging, if not supporting, inefficient manufacturing operations. All of these factors are inflationary; they increase the cost of production while reducing the amount of goods and services produced.

Set-aside sales return less revenue to the federal government and state and local governments than do unrestricted sales. This reduced dollar return contributes to the possibility of deficit spending. The reduced prices paid for set-aside sales do not produce lower prices of timber products for the consumer. Under the SBA program, important economic elements of the natural market are arbitrarily excluded and that exclusion reduces competition. Reduced competition reduces the stumpage return to the government; however, prices of finished wood products, or any other commodity, are not set by the lowest-cost producers. They are set by the highest-cost producers who can still produce and sell at a price that the market is willing to pay.

[25/] For example, large business is sometimes compelled to acquire timber outside its normal "working circle" when the next 6-month sales period is effectively booked up with set-aside sales. Conversely, the maintenance of an artificial small business share, even in the absence of small business, has resulted in small business purchasing sales far outside their working circle because of any competition. The unnecessary expenditure of energy resulting from these unnatural economic decisions is still another adverse effect of the SBA program.

The producers not eligible for the SBA program must buy stumpage in a highly competitive market since the program keeps them away from most of the timber supply. Thus, a major portion of the industry is experiencing higher costs of timber supply. So long as "large business" is able to produce and sell at a price that the market will bear, the difference between their stumpage supply price and the stumpage supply price of so-called small business represents a windfall profit to the latter. The difference between the increased stumpage price that large business must pay and the stumpage price they would have paid were there not an SBA program, is an inflationary cost-push factor. When markets are strong for finished products, this cost increment increases the price necessary to bring an additional item of production into the market. When markets weaken, this cost increment will cause some item of production to fall out of the market sooner than it otherwise would have. Both features are inflationary, increasing price relative to available goods and services.

None of the companies eligible under the SBA program, nor, for that matter, any company having a like competitive advantage, is going to offer its finished product at a market price below what it can get and what other major producers are getting. Thus, when prices increase because of high costs to a part of the market, they also increase on all of the production going into the market. When markets decline and prices get soft, the first producers to be priced out of the market are those with the highest costs. Thus, the restricted companies get priced out first, other things being equal. Because of the SBA program, these are the large companies which, traditionally, during periods of market decline, have tended to maintain their mills in operation while the smaller operators have elected to shut down.[26]

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[26] This can have nothing but a negative impact on employment.

Thus, the present program causes some major producers to operate during periods of market decline at a loss, or at a greater loss than they would have experienced otherwise. Operating at a loss is inflationary, because, by definition, it is a situation where more dollars are injected into the economy through wages and other costs and expenses than are matched by the value of the products produced. That aggravates the imbalance of dollars to goods and services and is inflationary.

Constraints in the market that arbitrarily give an advantage to any industry segment reduce the competition which that favored segment has to meet. It is the pressure of competition that forces efficiency of production. Concomitantly, elimination of competition will tend to adversely affect the efficiency of any producer. Over time, those companies which are SBA program beneficiaries with respect to timber supply costs tend to become less efficient than they otherwise would have been had they had to meet the competition of a free marketplace.

Inefficiencies of production require an allocation of more resources to the production of goods than should otherwise have been allocated. The allocation of that unnecessary amount of wealth to the production of those goods, i.e., lumber and plywood, reduces the available wealth, i.e., funds, for the production of other goods and services in the timber industry and in the general economy. To the extent that the inefficient producer spends more than he otherwise would have on the production of a product like lumber, less funds are available for other opportunities. This impact is felt not only with respect to the inefficient operation individually, but it also has a more generalized negative effect since it reduces the amount of funds generally available in bank deposits, etc.

Subsidizing inefficiency, as through the SBA program, keeps a certain amount of capital and cash flow artificially protected from the competition in other parts of our economy for the use of that capital and cash flow. If that artificial protection did not exist, a certain amount of that protected capital and cash flow would be diverted through natural competition to the production, more efficiently as a consequence.

There is a compelling need to examine the costs to society of the SBA program, weighing them against the benefits presumed to accure therefrom. When such an analysis is made, it becomes very clear that the societal price being paid is wholly out of line with the limited benefits produced.

VI The Advantages of Being "Big-Small"

The big-small trade association people make much of their chart showing size. They ignore industry statistics which are most illuminating.

Out of 1129 companies self-reporting 1977 lumber production to Forest Industries magazine, 41 of the top 100, out of 1129, qualify for the SBA subsidy. Our of the top 198 companies, out of 1129, which produce over 25 MBF, 125 of 198 received the SBA subsidy. And it is the big-small who dominate the SBA Program, not the 931 companies out of 1129 that produce under 25 million board feet annually.

The present administration of the present set-aside program is dominated by the big-small. A recent economic study of Lane County, Oregon, showed that only 20% of the areas SBA eligible companies, under the present 500 employee size standard, purchased over 50% of the set-aside sales. In the Richard Haynes Paper he identifies $10.5 million in subsidies being shared among 35 SBA firms in Area D, and that seven of the 35 firms accounted for 52% of the set-aside sales. What this really says is, of those firms that purchased set-aside sales in Area D, 20% of them purchased 52% of the sales -- some firms undoubtedly bid but did not buy any sales and so the percent of firms buying the majority of the SBA timber is considerably less than 20%.

Attachment E to this Statement are specific figures showing the difference between open and set-aside sales on one market area on one Oregon National Forest. Similar stories can be shown for market areas on the Willamette National Forest, for the Rogue River National Forest, and other forests.

Attachment F tells the story of low appraisals on set-aside sales in New Mexico and Arizona. From the same geographic location in 1979, a high quality and high grade Ponderosa Pine sale was appraised for $40.61 per MBF for the Pine, the Forest Service advised Duke City Lumber Company that the sale was deliberately appraised to a small mill which cuts only rough green lumber and sells the same locally, and therefore, an adjustment factor of the selling price was in order. A sale sold in April 1979 of low quality Ponderosa Pine was apparised at $132.47 per MBF.

The Attachment has another interesting comparison but the Forest Service's approach in appraising the Creek Sale shows another inequity and preferential treatment for the small business firm and shows a practice which is a subsidy and brings a lower return to the Federal Treasury.

The last Attachments G and H are a series of correspondence between the SBA and myself. The September 15, 1978 letter is self-explanatory, as is the October 18, 1978 letter.

At Washington, D.C., March 19, 1979 House Agriculture Committee Forest Subcommittee Hearings a representative of the United States Forest Service testified that Helicopter and other difficult sales are not often selected as set-aside sales, that sales which require specialized logging equipment such as Helicopter are generally not set-aside, that deficit sales are generally not set-aside and that this would distort figures on which type of sale returned the most total money to the Federal Treasury, set-aside sales or open sales. When the tough-to-handle, difficult operationally, etc. sales are not set-aside then, quite naturally, set-aside sales would return more money to the Federal Treasury. And this is not taking into account the generally superior quality of the slaes selected for set-aside.

In his April 20 statement to the House Agriculture Forests Subcommittee, Economist R. Dennis Scott of the International Woodworkers of America explained that the IWA is a trade union representing 115,000 workers employed in logging, sawmilling, plywood, and other wood manufacturing operations.

Scott stated that"...the SBA timber set-aside program is in need of extensive study and review to determine its impact on the entire forest products industry."

Scott went on to support turning administration of the timber set-aside program to the Forest Service and eliminating the role of the Small Business Administration. Scott testified "...agencies face increased complexities in managing public timber lands from multiple use and coordinating balancing of the different and varied interests -- by granting a large share of the responsibility in the timber sales area to the SBA and over all, consistent in balanced policies is extremely difficult to achieve."

Scott discussed the superior quality of set-aside sales:

> "In caring for its constituents, the SBA has designated what have been termed "higher quality" sales to its clients. For many years this has been an allegation rather than a proven fact. Two studies recently completed present considerable evidence that higher quality sales are, indeed, being allocated to the SBA set-aside program. A study[1/] by Forest Service Economist Richard Haynes compared open sales to set-aside sales for differences in certain "quality" characteristics. Such things as logging costs, volume per acre, percent of major (high value) species in the sale, and road costs were used to

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[1/] Haynes, Richard W., "A Comparison of Open and Set-Aside Timber Sales on National Forests in the Douglas Fir Region," Pacific Northwest Forest and Range Experiment Station, March 13, 1979.

evaluate differences in the two types of timber sales. Haynes noted marked differences when examining timber sale data from throughout the Douglas fir region. Logging costs, for example, were 5.6 percent less for SBA set-aside sales -- a highly desirable characteristic for the SBA purchaser. Road building costs, on the other hand, were higher for the set-aside sales. Timber volume per acre was higher for set-asides. The Haynes Study did not calculate a composite or aggregate differential in quality for the entire Douglas fir region, but it did point out that large statistical differences existed between open and set-aside sales. A GAO report[2] released April 5, 1979 expanded on the Haynes methodology and reviewed 7,106 open and set-aside sales in 58 National Forests. Eleven quality characteristics were compared. This study found that set-aside sales were of higher quality than open sales in 50 of the 58 National Forests tested. Despite this general higher quality, set-aside sales returned less revenues than open sales in 48 National Forests.

These studies should assist legislators and policy makers in making a decision as to where the set-aside program ought to be administered. Under predominant influence of the SBA, marked differences in quality have been noted. The Forest Service is required to consider, balance off and equalize, to the degree possible, the various interests competing for timber resources. The Forest Service and BLM are better suited than the SBA for reducing the inequity in quality between set-aside sales and open sales."

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[2] Allegations Regarding The Small Business Set-Aside Program For Federal Timber Sales, General Accounting Office, CED 79-8, April 5, 1979.

PREVIOUS SBA REVIEWS OF THE PROGRAM AND SIZE STANDARD

That there was need for additional study of the forest products industry with regard to the Small Business Set-Aside Program and Timber Industry Size Standard was clearly shown during 1980 when Senate (Bill S.918), which did not pass in that form, authorized a study to define and describe the forest products industry, and in particular, to define and describe that portion of the forest products industry which consists of small businesses and to present the Senate Select Small Business Committee with several policy alternatives. The Legislation directed that particular attention should also be given to analysis and review of the reasons for failure among firms within the forest products industry. Attachment I discusses the May 19, 1973 "Analysis of Selected Factors of the SBA-Forest Service Timber Set-Aside Program", completed by the SBA. One concludes from their study that their conclusion the Program is working is a totally unwarranted conclusion because it isn't based on any observation that has any relevance to any acceptable cause or basis to the Program in the first place. The SBA conclusion is presumptious and establishes a casual link that may or may not apply.

The SBA commissioned 1976 Study "An Economic Analysis of the Small Business Set-Aside Program Involving National Forest Timber" is considered to be such a "white-washing" of the Program in academic circles and among forestry economists, that it was thoroughly discredited and found useless. The Study ignored the impact of the size standard and was based primarily on the results of the questionnaire sent to program-eligible companies who are beneficiaries of the Program and obviously have good things to say about the Program. This SBA Report takes qualitative, subjective data derived from a questionnaire, assigns to it certain arbitrary scores, combines it with limited selected data from other sources, draws some conclusion based on assumed relationships, and presents the whole as an economic analysis. There is little in the Report that could be considered analytical. It is a presentation of the self-serving opinions expressed by the respondents to a questionnaire sent to a selected sample, combined with opinions of the Analysis. The results happen to collaborate opinions held by the small businesses of the administration. An overview of this SBA Study is Attachment J.

ATTACHMENT A

NINETY-SIXTH CONGRESS

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COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
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LEE MC ELVAIN
GENERAL COUNSEL

STANLEY SCOVILLE
SPECIAL COUNSEL
FOR LEGISLATION

GARY G. ELLSWORTH
MINORITY COUNSEL

June 18, 1979

Honorable A. Vernon Weaver, Administrator
Small Business Administration
1441 L Street, Northwest
Washington, D. C. 20416

Dear Mr. Weaver:

On April 15, 1979 the General Accounting Office released a report (CED-79-8) investigating allegations regarding the set-aside program for federal timber sales, jointly administered by the Forest Service, Bureau of Land Management, and the Small Business Administration. The GAO report has certain findings about the current administration of this program which raise serious concerns. These include--

1. GAO found that there was no record that SBA considered the factors required by its regulations in setting the timber industry size standard and that the timber industry size standard has never been justified in terms of the six factors for formulating an industry size standard specified in SBA regulations. We would like to know when SBA plans to provide the type of analysis called for by their regulations.

2. GAO found that companies with fewer than 100 employees have benefited less from the set-aside program than have companies with 100 to 500 employees. GAO also noted that practically all the timber companies going out of business have been firms with less than 100 employees. In light of these findings, we would like to know what plans, if any, you have to switch the program benefits to these smaller firms.

> 3. GAO found that at a great many national forests, set-aside sales were of higher quality than open sales and yet returned less revenue to the U.S. Treasury. We would like to know how this situation came about and what you are planning to do to even out the quality of sales and revenue return between those set-aside for small business and those offered as open sales.
>
> 4. GAO reported that the procedures used for the six-month sales analysis and five-year recomputation of the small business share tends to maintain a static allocation of timber between large and small firms irrespective of changes in industry structure. In their report, GAO suggested one possible revision involving the procedures for tabulating purchase histories during the recomputation period. Their suggested revision seems to provide a more timely reflection of structural changes in the local industry while still maintaining the integrity of the set-aside program's protection of small purchasers. Do you believe GAO's suggestion has merit or would a different revision be preferable to deal with this situation?

It would appear that the present SBA set-aside program, rather than honoring the spirit of the law under which it was created, has in effect "allocated" timber in certain areas to individual companies and communities at the expense of other dependent communities.

The purpose of this letter is to request the Secretaries of Agriculture and the Interior to review the respective Interagency Agreement governing the program's administration to determine if these present regulations should be modified or even replaced. Besides a general program review, attention should be given to a potential closing of operations in dependent communities under the present program.

We are also requesting that the Small Business Administration review the timber industry size standard as specified in SBA regulations and to investigate the GAO report that it is the under-100 employees firms going out of business and that the program benefits the 100 to 500 employee firms.

Because we have a direct legislative, as well as an oversight, interest in concerns with this program, we request a prompt and detailed review of the program and response to identifiable problems.

Sincerely,

MORRIS K. UDALL, Chairman

Jim Weaver
JAMES WEAVER

JAMES P. JOHNSON

ATTACHMENT B

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JUL 3 0 1979

Honorable James P. Johnson
House of Representatives
Washington, D.C. 20515

Dear Congressman Johnson:

This is in further response to your June 18, 1979, letter regarding the General Accounting Office reported allegations about the current administration of the Small Business Administration timber set-aside program. Identical replies have been furnished Congressman James Weaver and Chairman Morris K. Udall.

As an overall response to your stated concerns raised by the GAO report, the SBA takes strong exception to both the findings and the overall content of the report. As stated in the SBA cover letter of February 2, 1979, and supported by information and material provided, the GAO findings are considered to be generally unsubstantiated, as well as misleading, and appear to be designed to cast the most successful SBA timber set-aside program in an undeserved, unfavorable light.

During the past two years the SBA timber set-aside program has been subjected to ever-increasing challenges. In almost every instance the source of those challenges, which emphasize the need to help the very small elements of the industry, has been the Public Timber Purchasers Group (PTPG), an organization with the avowed intent to do away with the SBA timber set-aside program. This organization, (PTPG), is made up of only large business interests, the giants of the industry. The small business timber community, all of which fall under the umbrella of the SBA as charged by Congress, is fully aware that without the protection provided by the set-aside program its future is short-lived.

In direct response to numbered paragraphs of your June 18, 1979, letter the following numbered comments are offered:

1. The SBA did follow its regulations and procedures in establishing the current timber industry size standard and has fully justified that standard. Included in the data made available to the GAO was a

September 13, 1966, SBA memorandum that clearly stated, "We have completed our investigation of the competitive effect of the recent (1964) increase in the SBA size standard for sales of Government-owned timber from 250 to 500 employees. The purpose of this was to determine if the change (1) has adversely affected the firms with less than 250 employees and (2) has given any indication that it might improve the competitive position of firms with 250 to 500 employees." The six major findings listed resulted in the conclusion that the SBA would continue to use the 500-employee level. Additional information available to the GAO included the detailed size review conducted in 1973, extensive public hearings conducted in 1975, and multiple published congressional hearings, letters, public comments, and analysis affirming the current size standard made since that time. This GAO finding, considering the wealth of data available, is indicative of the misleading character of the total report. The factors incorporated into the SBA Rules and Regulations concerning the eligible size for firms in the logging and forest products industries have been and are being considered and most importantly have clearly been met. The largest SBA eligible small business firm produces less than 7 percent of the lumber production of the largest of the forest products industry giants. The largest of the giant corporations has an annual revenue estimated at 100 times that of the largest of the eligible small firms. Approximately 85 percent of the firms in the forest products industry are small business firms, and firms within this category are currently successful in purchasing approximately 50 percent of the national sawtimber offered for sale. The remaining 15 percent are large business interests who capture the remaining 50 percent of Federal sawtimber sales to add to their extensive private holdings. Participation in the program has been by SBA Rules and Regulations restricted to loggers and timber manufacturers, all of which are primarily engaged in producing logs and/or timber and plywood. This differs from the makeup of most of the industry giants who control the pulpwood and paper industry and who are both multiproduct and multinational in makeup.

2. The GAO finding that companies with fewer than 100 employees have benefited less from the set-aside program than companies with 100 to 500 employees, is again misleading and not necessarily relevant. The conclusion drawn by GAO does not correlate with data provided (which shows firms of 0-25, 26-99, 100-249, and 250-499 employees, captured 19, 20, 35, and 21 percent of the set-aside sales on selected National Forests), contains questionable data, and does not review all segments of the industry. Additionally, the SBA program is designed to apply nationally and to provide the benefits to all elements within the size standard, not just a selected, or in this case the smallest, element. The SBA has, however, established, independent of any GAO involvement, a Special Salvage Timber Sales (SSTS)

program specifically designed to assist the smaller firms (25 or less employees) who are best suited to harvest smaller volume salvage sales. It is our intention to continue to apply the current program to all firms that meet the current timber industry size standard; i.e., firms primarily engaged in the logging or forest products industry, independently owned and operated, not dominant in their field of operation with the number of employees to include all affiliates not to exceed 500.

3. The GAO finding that set-aside sales were of greater value and as a result returned less revenue is erroneous. The GAO finding was derived from sales on a selected, limited number of National Forests using a GAO-developed definition of revenue. The GAO erroneous conclusions conflict with existing appraisal procedures, as well as established procedures to select typical sales as set-aside sales. Additionally, the GAO refuses to recognize that based on fully documented national statistics, set-aside sales on a value per board foot basis (the approved Government-wide standard to measure sales of timber) return more to the U. S. Treasury than open, unrestricted sales. All of the above in reality are of little consequence to the established small business set-aside concept wherein there is no requirement that prices of set-asides equal or exceed returns through unrestricted sales since our primary concern is to retain a viable small business industry. It is, however, of interest to note that the study procedure applied to determine timber value is not the approved procedure for appraising timber by either the U. S. Forest Service or Bureau of Land Management. Furthermore, no value or consideration is given to the existence of competition on all sales as a result of the retention of a viable small business community.

4. The GAO allegation that the program tends to maintain a static allocation of timber between small and large firms is an equally flagrant distortion of the data available. More market area shares declined and increased than remained static (approximately 121 of the 152 market area shares changed). The current set-aside program does nothing more than allow small business the opportunity for preferential bidding on the share they have historically purchased in the past. Set-asides are made only when small business cannot purchase its share in open competition. The GAO is basically proposing that large business interests be permitted to obtain small business set-aside shares through the acquisition of small businesses. Adoption of such a policy would result in the elimination of the program and subsequent demise of the independent, competitive small business forest products industry. The GAO failed to recognize or review the actions of the industry giants, who have vast land holdings as well as noncompetitive, long-term Federal timber contracts, and who are now pursuing from their corporation headquarters far removed from the dependent community, an aggressive program to gain control of Federal timber.

The simple factual system of using purchase history as reflected in the market area shares, however, makes the current program both practical and efficient. This view was adopted by the Federal Courts in Duke City Lumber Co. v. Butz, 382 F. Supp. 362, 539 F. 2d 220, Cert. den. 429 U. S. 1039, wherein the historical base share was held "to be reasonable, precise yet flexible means of insuring that small businesses receive a 'fair proportion' of Government timber sales." The use of the historic fair share and the existing small business size standard are the two primary obstacles that preclude large business control of the forest products industry.

In addition to the above, it is considered important to emphasize that the SBA timber set-aside program is considered a highly successful and fully responsive program reflecting the activity within the industry, and the congressional mandate to insure small business receives its fair proportion of total sales of Government property. The program fully reflects both the spirit and the letter of the Small Business Act.

It is believed that recent hearings held by the Senate Small Business Committee (May 7-8, 1979) fully reviewed and reaffirmed the program as currently administered.

In summary, the SBA timber set-aside program appears to be working well and to be serving not only the small business community but also the best interests of the Nation and the economy in general. With the new SBA initiatives (SSTS) instituted to aid the very smallest element in the industry, with the continued aggressive, innovative, and competitive marketplace, bidding by the small business industry and by the continued abidance in the Small Business Act, attempts by the very few large concerns to gain control of the timber industry as large business has gained control of our fossil fuels, remain thwarted.

Sincerely,

S/WILLIAM H. MAUK, JR. Acting

A. Vernon Weaver
Administrator

ATTACHMENT C

September 17, 1979

MEMORANDUM

Re: SBA Response to Congressional Inquiries Concerning Timber Sales Set-Aside Program

This memorandum is submitted in comment on the SBA form response to Congressional inquiries concerning operation of the timber sales set-aside program. In its response, SBA indulges in considerable rhetoric and some invective, but provides little, if any, illumination. SBA's repetition of arguments which were discredited and refuted in a recent GAO report[1/] evidences an administrative intransigence, if not arrogance, which cannot be tolerated. SBA had full opportunity to confer with the GAO concerning its findings prior to the preparation of a final report. It did so by launching a blunderbuss attack on the reliability and the integrity of the study, but GAO patiently and painstakingly documented the basis for its findings and refuted the unfounded criticisms raised by SBA. This matter is fully set forth as Appendix VII of the GAO Report and nothing would be served by repeating it here. Suffice it to say that the SBA arguments were devastated and the weakness of the SBA position is highlighted by this tiresome repetition.

[1/] Allocation Regarding the Small Business Set-Aside Program for Federal Timber Sales, (GAO 1979) (hereafter "GAO Report").

Before proceeding to a discussion of the specific points raised in the SBA form response, we would like to correct certain factual misrepresentations contained therein. First, SBA ascribes to PTPG "the avowed intent to do away with the SBA timber set-aside program". That allegation is untrue and the SBA knows it. PTPG has continuously and consistently maintained that a sound, rational set-aside program is in the national interest. What PTPG has tried to do is to educate all who would listen about the serious defects of the program and the damaging effects thereof. Second, the SBA statement that large business concerns (i.e., those having more than 500 employees) have "extensive private holdings" and "vast land holdings" may be interesting hyperbole, but it is inaccurate. The facts (to which SBA has serious aversion) are that, in several instances, large business concerns are every much as dependent on the availability of federal timber as is the small business segment. For example, the Forest Service recently testified that major companies had substantial dependency on national forest timber in their Pacific-Northwest operations, as follows:

Bohemia	50%
Boise-Cascade	60%
Louisiana-Pacific	90%
Medford Corporation	85%
Simpson Timber Company	75%
SWF Plywood	95%
Willamette Industries	50%

1. Establishment of Current Industry Size Standard. One of the specific findings made by GAO was that there was no record that SBA considered the factors required by its regulations in setting the current timber industry size standard. GAO documented in its report that SBA files contained no such record and also noted that "current Small Business Administration officials, as well as a former official who was familiar with size standards at that time, were unaware of any study made to justify the increase." (GAO Report, p.3) It has long been the law that an administrative agency must comply with its own regulations in taking official action and failure to do so invalidates the action. SBA's argument that it "reviewed" the size standard in subsequent years does not meet the point. Incidentally, SBA's statement that it made a "detailed size review" in 1973 is something of an exaggeration or inaccuracy. SBA conducted no hearings in 1973; what it did do, according to its own records, was "review analysis of SBA/TS timber set-aside program in a letter to OMB."[2/] In fact, if the SBA did engage in a review of the timber size standards, its then-Administrator was not aware of it. In August 1974, SBA Administrator Kleppe, testifying before a Senate Subcommittee, stated that the SBA proposed to review

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[2/] Hearings Before the Senate Select Committee on Small Business on Small Business Timber Set-Asides, 96th Cong., 1st Sess. at 77 (1979) (hereafter "1979 Senate Hearings").

the size standard in fiscal 1975.[3] There was no mention of a 1973 review, since there had been none.

On the merits, the facts are that a 500-employee size standard is unrealistically high. With the sole exception of SBA, every expert, every body which has been called upon to address the question has concluded that the 500-employee size standard is inappropriate.[4] For example, the 1970 report of the Public Land Law Review Commission concluded that "the current definition by the Small Business Administration of small firms as having less than 500 employees sets this limit at an unrealistically high level."[5] In 1975, a comprehensive study of the forest products industry was completed by Wesley Rickard, a forest economist. To this date, it remains the only comprehensive study ever undertaken of the timber industry size standard. That study showed that, by all economic measures, a drastic reduction in the size standard was called for by the facts. In 1977 hearings before a House Subcommittee, Forest Service Chief McGuire asserted that the 500-employee size standard is inappropriate, that it ought to be lower, and, more properly, that the size standard should be based on something other than employee number, such as volume of production.[6/]

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[3] Hearing Before a Subcommittee on Small Business of Senate Banking, Holding and Urban Affairs Committee on Small Business Timber Set-Aside Program, 93rd Cong., 2nd Sess. at 17 (1974) (hereafter "1974 Senate Hearing").

[4] For example, the nation's twenty-ninth lumber producer is a "small business" within the SBA definition, is eligible for and purchases set-aside sales. In 1978, this company produced almost 165 million board feet of lumber. This amount represented some 20% of the lumber production of the fourth largest U.S. producer.

[5] An economic study accompanying the Commission's report recommended that the SBA program include only companies with 100 or fewer employees.

There is not and never has been any justification in fact for the 500-employee size standard and no amount of ipse dixit rationalization by SBA can provide the necessary support. The selection of a 500-employee size standard was an arbitrary determination, made without compliance with SBA's own regulations. It has not gained any validity or credibility with the passage of time or by SBA's stubborn refusal to revise the standard downwards.

2. Companies Benefited by Program. GAO found that companies with fewer than 100 employees have benefited less from the set-aside program than have companies with more than 100 employees. SBA's conclusory charge that this finding is either unsubstantiated, misleading or irrelevant is as unconvincing as it is self-serving. SBA's reference to its Special Salvage Timber Sales Program ("SSTS"), designed to assist firms of 25 or fewer employees, is ironic indeed. SBA's entitlement to credit for this program is somewhat flawed by the fact that SBA opposed legislation introduced in 1978 to institute such a program and that it adopted its present SSTS program only after being pressured to do so. Of course, the fact that such

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[6/] Hearings Before the Subcommittee on Forests of the House Agriculture Committee on H.R. 5863, 95th Cong., 1st Sess. at 168 (1977) (hereafter "1977 House Hearings").

a program is necessary is proof positive that the current size standard is set at too high a level and that those companies at the high end of that size class (viz., those having 100-500 employees) are greatly benefiting therefrom, to the detriment of the truly small companies in the forest products industry.[7/]

3. Higher Quality/Lower Revenue of Set-Aside Sales. Another finding of GAO was that set-aside sales were of greater value but returned less revenue. SBA chooses to attack this finding by arguing that the study made by GAO utilized unreliable procedures, implying also that this did not have the approval of the Forest Service or the Bureau of Land Management. What SBA conveniently ignores is the specific statement in the Report (p. 9) that "Forest Service and Bureau of Land Management officials agreed overall with the facts contained in the report". SBA challenged that statement, prompting GAO to seek confirmation. The result was as follows: "Our subsequent inquiries with the Forest Service and BLM confirmed our earlier understanding that there was no disagreement with the facts contained in this Report." (p. 84).

[7/] A 1977 economic study of Lane County, Oregon, a major timber-producing area, showed that a few firms in the 100-500 employee size class had dominated set-aside sales. Specifically, it showed that less than 20% of the SBA-eligible firms in Lane County had purchased over 50% of the SBA sales.

Additionally, other independent studies have confirmed the GAO finding concerning the loss of revenue from set-aside sales. In testimony before a Senate Committee, Wesley Rickard gave the results of a timber market study in Klamath County, Oregon, which showed that "in almost all cases the SBA set-aside sales sold for substantially lower prices than the unrestricted Forest Service sales".[8] A 1977 University of Washington doctoral dissertation by Ronald N. Johnson, Competitive Bidding for Federally Owned Timber, showed that "the preferential treatment bestowed upon smaller firms . . . has had a negative effect on the prices received for national forest timber" and that the set-aside program restricts "the ability of the Forest Service to extract maximum returns . . . ." Finally, a high Forest Service official testified recently that "the price that the Government receives for sales where we limit the bidding to the set-aside program is less than on comparable sales".[9]

4. Static Allocation of Timber. GAO found that the program tended to maintain a static allocation of timber between small and large firms. SBA seeks to challenge this finding by minimizing the effect of the set-aside program,

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[8] 1979 Hearings at 194.

[9] 1977 House Hearings at 167.

alleging that all it does is allow for an opportunity for preferential bidding. SBA's lack of candor does it little credit. The program is indeed one of allocation and it has been recognized as such by both the SBA and the Forest Service. For example, SBA Administrator Kleppe referred to participation in the program as being on an allocation basis.[10] Similarly, Forest Service Chief McGuire described the set-aside program as an allocation system in testimony before a House Subcommitee.[11] The facts recited in the GAO Report fully support such a characterization.

Finally, SBA appears to confuse the general support for the set-aside program concept (shared in by PTPG, by the way) with unqualified endorsement for the current program and size standard. A somewhat more discriminating eye would discern that a program which confers a major portion of its benefits on companies which rank among the biggest producers in the industry, which attempts to freeze or perpetuate industry structure as of a certain date, regardless of economic

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10/ 1974 Senate Hearing at 18.

11/ 1977 House Hearings at 166.

change, which penalizes growth and rewards inefficiency is one that clearly merits some substantial revision. Such a revision is clearly called for by all of the relevant facts and should be promptly instituted.

Respectfully submitted,

Paul S. Quinn

By: Paul S. Quinn

By: Pierre J. LaForce

WILKINSON, CRAGUN & BARKER

Attorneys for Public Timber
Purchasers Group

ATTACHMENT D

STATEMENT OF WESLEY RICKARD

April 20 and May 7, 1979

My name is Wesley Rickard. I am a forest management and forest economics consultant with offices in Tacoma, Washington. My purpose is to comment on an extensive economic timber marketing study which I conducted, covering an extensive area of Oregon and Northern California.

Personal Background

I obtained a Bachelor of Science degree in Forest Management from the New York State University College of Forestry at Syracuse University in 1957 and a Master of Science degree in Forest Economics from Michigan State University in 1959. I was engaged in forest economics research with the United States Forest Service at Portland, Oregon, from 1960 to 1962. From 1962 to 1968, I was employed as a forest economist with Weyerhaeuser Company and was manager of their Forest Economics Department. Since February of 1968, I have been self-employed as a forest management and forest economics consultant. I have served as a consultant on forestry and forest-related matters on several occasions to the legislatures of the state of Oregon and Washington. My clients have included a broad and diverse group of companies, both large and small, indivuduals, Indian tribes, public agencies, and industry associations.

Study of the Southwest & Central Oregon, Northwest California Timber Market

In 1977, I completed a timber market study for use in litigation in the United States District Court for the District of Oregon. This study has been already supplied to all parties to the litigation and I have received permission from the attorneys for my client to reference to that study at this House Subcommittee Hearing as regards data that relates to the timber set-aside program.

The market study covered a geographic area that extended approximately 200 road miles from Chiloquin in Klamath County, Oregon. It made use of Forest Service timber sale data from a geographic area roughly corresponding to that approximate radius. It included all of some national forests and parts of others. The national forests that were entirely included within this market area were, in eastern Oregon the Winema and Deschutes, in northern California the Modoc and Klamath, and in western Oregon the Rogue River, Umpqua, and Willamette. Data from these forests will be referenced here, except for the Deschutes which had no SBA set-aside sales during the years analyzed in the market study.

In this market study the objective was to describe the timber market for the years 1972-1974 within the designated area. One of the descriptions called for was the log prices indicated by stumpage sales. Subsequently for reference, the same analyses were made for 1975 and 1976. Thus we have indicated log prices for 1972-1976.

Studying the SBA set-aside program was not an objective of this market study. However, these sales are identified as to whether they are SBA set-asides or not and thus it is possible to observe any differences that exist between the SBA set-aside sales and the unrestricted sales.

Log prices indicated by the sales were simply the allocated species bid prices for each sale plus the logging costs identified in the Forest Service timber sale appraisals. Indicated log prices from this analysis thus take account of differences in logging costs as between sales. That does result in making it possible to compare set-asides with unrestricted sales with the assurance that any differences in price indicated will not be the result of a difference in logging cost, but rather will be a result of differences in the terms of sale.

In this market study, indicated log values were calculated by species, thus additionally eliminating price differences as between sales that might be caused by there being a different species composition from one sale to another. The result is that we were able to show log prices for individual species as indicated by Forest Service stumpage sales - for unrestricted sales on the one hand and for SBA set-aside sales on the other. The following tables show these differences for the years 1972-1976 for the six national forests entirely included in the market area, for the major species, i.e., Ponderosa pine and sugar pine in the pine region, and Douglas-fir in the Douglas-fir region. Furthermore, for additional clarity of comparison, salvage sales have not been included in the averages shown here. The averages shown are average volume weighted dollar values per thousand board feet, rounded to the nearest whole dollar. The data includes all sales over $2,000, except for deficit sales and lump sum sales for which rational species bids cannot be determined. Additionally, sales were used as an indicator of price for a given species only when the species comprised at least 10 percent of the volume of the sale, in order to further eliminate bid data that might not be representative of market values, due to bidding strategies. In this current application with respect to volume weighted average prices, however, this consideration would not substantially affect the resulting average price.

Log Prices Indicated By U. S. Forest Service
Stumpage Sales, in Dollars per MBF

Douglas-Fir

	Rogue River N.F.		Umpqua N.F.		Willamette N.F.	
Year	Unrestricted Sales	SBA Set-Aside	Unrestricted Sales	SBA Set-Aside	Unrestricted Sales	SBA Set-Aside
1972	No Set-Asides		No Set-Asides		No Set-Asides	
1973	No Set-Asides		No Set-Asides		($226)	($222)
1974	$311	$188	$273	$249	333	269
1975	272	240	286	252	342	332
1976	297	265	270	238	316	301

Log Prices Indicated By U. S. Forest Service Stumpage Sales, in Dollars per MBF

Ponderosa and Sugar Pine

	Winema N.F.		Modoc N.F.		Klamath N.F.	
Year	Unrestricted Sales	SBA Set-Aside	Unrestricted Sales	SBA Set-Aside	Unrestricted Sales	SBA Set-Aside
1972	($ 96)	($101)	No Set-Asides		($117)	($109)
1973	(147)	(154)	No Set-Asides		(191)	(135)
1974	297	162	$238	$154	(256)	(92)
1975	197	169	No Set-Asides		No Set-Asides	
1976	223	213	250	199	200	148

It can be seen from the above table that in almost all cases the SBA set-aside sales sold for substantially lower prices than the unrestricted Forest Service sales. These are annual averages, however, and should be viewed with the following perspective.

The prices shown are annual averages. Therefore in cases where the market was moving strongly up or down during the year and at the same time the unrestricted sales tended to be clustered in a different part of the year than the SBA set-aside sales, comparisons between the two can reflect market movement rather than differences in terms of sale. This type of situation was strongly evident on those forests and in those years where the prices are bracketed. For example, the SBA set-aside sales were clustered in the latter part of the year during a rising market, thus causing their indicated prices to appear unrealistically high relative to unrestricted sales, in the following cases - the Winema National Forest in 1972 and 1973, the Klamath National Forest in 1972 and 1973, and the Willamette National Forest in 1973. In one instance, the SBA set-aside sales were clustered in the latter part of the year during a somewhat declining short-term market cycle for Forest Service market stumpage sales. This was on the Klamath National Forest where it appeared that sales in the latter half of 1974 were somewhat lower priced than in the early half of 1974 and consequently the clustering of SBA sales in the latter part of the year created a difference in average indicated log value between the two types of sales that probably overstates the difference really caused by the set-aside program on that forest, in that year.

Given these considerations, however, it is still clearly apparent that the log prices indicated by U. S. Forest Service stumpage sales for the major species were substantially lower on set-aside sales than on unrestricted sales, in amounts ranging from a minimum of $10 per MBF to well over $100 per MBF in some cases. Thus it is clear from this data that set-aside prices were significantly lower than unrestricted timber prices under comparatively similar circumstances of competition.

ATTACHMENT E

HEBO MARKET AREA
SIUSLAW NATIONAL FOREST

OREGON

	Open		Set-Aside	
	Appraised	Purchase	Appraised	Purchase
April thru June '78	$1,563,102	$2,596,684	----	----
Oct. '77 thru March '78	1,801,578	2,996,695	$4,137,207	$6,119,519
April '77 thru Sept. '78	2,268,942	4,371,646	296,396	452,872
Oct. '76 thru March '77	2669,110	3,403,107	4,324,827	4,661,196
Jan. '76 thru Sept. '76	3,817,771	6,603,317	991,203	1,841,135
TOTALS	12,120,503	19,971,449	9,749,833	13,074,722

164% of Appraised Price   134% of Appraised Price

This chart illustrates that for an extended period of time, in one geographic location, there is a dramatic difference between the appraised price and the actual price between open and set-aside sales. The up-bid premium for set-aside sales is not as high as on open sales. The return to the Federal government is less on set-aside sales. This does not take into account that the quality of set-aside sales may be superior.

ATTACHMENT F

DUKE CITY
LUMBER COMPANY, INC.
SUBSIDIARY OF U.S. INDUSTRIES, INC.

P.O. BOX 25807 ALBUQUERQUE, NEW MEXICO 87125 TELEPHONE (505) 842-6000

April 3, 1979

Mr. John Gram, President
Public Timber Purchasers Group
1214 Oregon Bank Building
319 S.W. Washington
Portland, Oregon 97204

Dear John:

I am enclosing some information on three timber sales. This information is relative to preferential treatment to S.B.A. operators.

The Creek and Gallina Timber Sales are located on the Cuba District of the Santa Fe National Forest. The Creek Sale was sold on January 23, 1979, and although it is a small sale, it contains very high-quality and high-grade ponderosa pine. The sale was advertised for $40.61 for the pine and the primary reason for this low appraisal is shown on the attached handwritten narrative. The Forest Service stated that the sale was deliberately appraised to a small mill which cuts only rough green lumber and sells the same locally. Therefore, an adjustment factor of the selling value was in order.

The Gallina Sale is to be sold later this month. Ponderosa pine is appraised at $132.47 per thousand, and is appraised to the Duke City Lumber Company mill at Cuba. This is a low-quality ponderosa pine stand which can be shown somewhat by the accompanying sheets attached to the appraisal summary.

I have also included a sale named the Upper Zuni Sale, located on the Cibola National Forest, which was recently sold as an S.B.A. sale. This sale contains 4,630,000 feet of ponderosa pine. It is interesting to note that this sale was appraised at $128.57 per thousand, and according to the pre-sale report, it was extremely high-value timber. The appraisal shows Grade 1 as 5.72%; Grade 2 as 5.94%; Grade 3 as 13.37%; and Grade 5 as 74.98%. On the basis of grades, this is probably the highest quality timber in Region 3. It is also interesting to note that the Upper Zuni Sale is appraised $3.90 less than the Gallina Sale which is a very low-quality stand of timber.

These are all interesting comparisons, but I believe that the Forest Service's approach in appraising the Creek Sale is something that will be of interest to you which shows another inequity in preferential treatment for the small business operators.

Yours truly,

DUKE CITY LUMBER COMPANY, INC.

Carl Hakenson/kh

Carl Hakenson

CH/kh
Encs.

ATTACHMENT G

PUBLIC TIMBER PURCHASERS GROUP

1214 Oregon Bank Building · 319 S.W. Washington · Portland. Oregon 97204
Area Code 503/223-8827

September 15, 1978

A. Vernon Weaver
Administrator
Small Business Administration
1441 L Street, NW
Washington, D. C. 20416

Dear Administrator Weaver:

On May 16, 1977 our Group wrote you to request that SBA sponsor and finance a study, to be undertaken by an impartial, independent organization, of current timber industry data to insure a factual basis for the SBA size standard for the timber industry. On June 22, 1977 you met with Mr. Howard Greenberg and me; we generally discussed the situation and left material for your review. You said you would study the material and advise us of your decision concerning initiation of the study we were urging.

On June 24 I wrote to you again reminding you of our request. On July 20, 1977 you wrote us advising that SBA would not sponsor the requested study---which was then no surprise because we had learned a few days earlier from an industry publication report that on June 17, five days before our meeting, in a speech to the Southeastern Lumber Manufacturers Association, you had said, according to the press release:

> "...I do not plan to change the current size standard of 500 employees for the purchase of Federal timber."

On June 20, 1977 Dr. Rupert Cutler, Assistant Secretary of Agriculture, wrote to you proposing joint review of the size standard applicable to participation in the timber set-aside program. SBA refused to join in such a review.

Shortly thereafter a number of Senators and Congressmen requested the General Accounting Office to undertake a study of the Federal timber set-aside program. This study was initiated in the fall of 1977 and, when completed, will include a review of the following aspects of the program:

A. The SBA's size standard for determining eligibility to participate in the set-aside program.

B. The procedures for calculating the small business share of Federal timber sales and for determining the specific sales which are reserved for eligible bidders;

C. The revenues received from set-aside sales as compared with those received from nonpreferential sales;

D. The set-aside program's economic impact on communities where ineligible mills are dependent on Federal timber sales; and

E. The deviations from normal and expected business practices which may be caused by the set-aside program.

On December 8, 1977 the Washington Office of the Forest Service requested a summary of set-aside purchases for 1976 and 1977 by firms having 1 to 50 employees, 51 to 100 employees, and ensuing increments of 100 up to 500 employees from SBA. I understand that SBA advised that such information was not available.

On December 19, 1977 Senator Gaylord Nelson, Chairman of the Senate Select Committee on Small Business, requested the GAO to survey the size standards established by SBA. The GAO Report of August 9, 1978 in answer to his request is a serious indictment of the process for establishing size standards. The Report recommends that "The Small Business Administration needs to reexamine its size standards to provide Federal Assistance for appropriate small business firms."

This is exactly what we proposed to you in May-July 1977 with respect to the Timber Industry Size Standard. We understand that the review aspect of the current GAO Timber Study of the timber size standard and set-aside program has been completed. It is our understanding a report will be drafted shortly and after discussion with SBA, the Forest Service, and other interested government agencies, the Timber Industry Report will be published before the end of the year.

In view of the August 9 GAO Report there is good reason to believe that GAO's findings on the size standard, with respect to the timber industry, will be consistent with criticism contained in the August 9 Report with respect to other industries.

Early in 1978 Congressman Weaver, Chairman of the Subcommittee on Forestry for the House Agriculture Committee, introduced legislation to establish a Small Loggers Salvage Program for companies with 25 or less employees. After hearings on the proposed legislation, where the SBA testified against the legislation, subsequent meetings were held with representatives of SBA, the Department of Agriculture, the Forest Service, and members of Congress. The meetings resulted in an agreement to establish such a program administratively, although conflict over the "70-30 Rule" and other details have delayed even a test program. The Small Loggers Set-Aside Program is prima facia evidence of the excessiveness of the 500 employee size standard as qualification to benefit from set-asides of Federal timber.

For almost a year and a half we have spent considerable time and effort attempting to have a rational review conducted of the present timber set-aside standard. We firmly support a strong small business community; our members rely on thousands of small businesses who supply goods and services to our industry. We do not oppose a timber set-aside program for truly small business based on need and ability to compete.

But when a recent survey of 1129 companies in the industry by Forest Industries Magazine for 1977 shows that 41 of the top 100 lumber producing companies qualify as small businesses for benefits of the set-aside program, that 9 of 50 companies producing over 100 MMBF, that 44 of 59 producing 50 to 100 MMBF, and 72 of 79 producing 25 to 50 MMBF all are classified as small business by SBA under the current 500 employee size standard, the inappropriatness of the present size standard is obvious.

We respectfully request that SBA replace the present 500 employee size standard with one which eliminates from the timber sale set-aside program the numerous middle-sized firms who now obtain most of its benefits and allows those benefits to flow to the truly small firms in the industry.

Sincerely,

John K. Gram
President

JKG/frd

cc: Senator Gaylord Nelson
Congressman Neal Smith
Secretary of Agriculture Bob Bergland
Assistant Secretary of Agriculture Dr. M. Rupert Cutler
Forest Service Chief John R. McGuire
OMB Director James T. McIntyre
Secretary of Interior Cecil D. Andrus
BLM Director Frank Gregg

ATTACHMENT H

October 18, 1978

Mr. Robert F. McDermott
Acting Associate Administrator for
Procurement Assistance
Small Business Administration
1441 L Street, NW
Washington, D. C. 20416

Dear Mr. McDermott:

Thank you for your letter of September 27, 1978 in response to the copy of the letter I sent to Administrator Weaver on September 15, 1978 to which, incidently, I have not received a reply from him as of this date.

We respect your interest and efforts in preserving and protecting the small business community and in preserving competition in the forest products industry.

We fully support such a policy. Our basic difference involves the definition of what is "small" business. The August 9, 1978 GAO Report to Senator Nelson on SBA Size Standards raises similar questions.

You state in your letter that the largest small business, listed as No. 32 of the top producers in 1977, produced about 170 MMBF of lumber or less than 8% of the largest firms 2.4 billion board feet of lumber.

You apparently were referring to the Mountain Fir Lumber Co. as the largest "small" and to Weyerhaeuser as the largest firm. Weyerhaeuser buys only a limited amount of public timber since almost all of its timber comes from privately owned holdings.

May I point out that the referenced statistics indicate 532 companies reported production under 4.9 MMBF of lumber or at most 2.9% of the largest "small" company production and another 203 companies reported production from 5 to 9.9 MMBF of lumber or from 2.9% to 5.8% of the largest "small" company production.

In summary, 735 companies reported production ranging from a small fraction to 5.8% of the largest "small". In otherwords, the largest "small" produced a minimum of 17 times to more than 34 times the production of the truly small firms as outlined in Forest Industry Magazine survey of 1977 production. To a lesser degree, this kind of comparison is true of the other 124 of the 198 companies producing over 25 MMBF of lumber per year (9 companies producing over 100 MMBF of lumber, 44 producing 50 to 100 MMBF of lumber, and 72 producing 25 to 50 MMBF of lumber).

We firmly believe the present size standard of 500 employees is not appropriate and should be reduced to 100 employees and include a production standard of a maximum of 25 MMBF of lumber. The 100 employee/25 MMBF production standard should be adopted. We are confident that a factual study will support this position.

Kindest regards

Sincerely,

John K. Gram
President

JKG/frd

cc: Administrator A. Vernon Weaver
Deputy Administrator Patricia M. Cloherty
Senator Gaylord Nelson
Congressman Neal Smith
Secretary of Agriculture Bob Bergland
Assistant Secretary of Agriculture Dr. M. Rupert Cutler
Forest Service Chief John R. McGuire
OMB Director James T. McIntyre
Secretary of Interior Cecil D. Andrus
BLM Director Frank Gregg

bcc: Executive Committee
Ray Luthy
John Davis
Don Fisher
Ed Olson
Bud Tomascheski
John Crowell
Kirk Ewart

Howard Greenberg

ATTACHMENT I

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MEMORANDUM

The May 1973 Analysis of Selected Factors of the SBA-Forest Service Timber Set-Aside Program

INTRODUCTION

From the bottom paragraph of page v, it would appear that litigation, set-aside sales, and reduced mergers and acquisitions was the basis on which the SBA determined the program was "working". This was a curious standard, however, since if the program was working, one would think that determination would be based on an evaluation of a change in the factors which were the cause for the program in the first place. If damage to small business was a cause for the program, then whether the program was working should have been gauged by some measure of reduced damage to small business. None of the factors mentioned comes into that category. One could presume from this statement at the bottom of page v, that the SBA felt that the set-aside program was necessary because there wasn't enough litigation, there weren't enough set-aside sales, and there were too many mergers and acquisitions, in their opinion. Mergers and acquisitions, by the SBA's own data, was a nominal factor during the years prior to the new 1972 set-aside program so that potential cause finds no justification in their data. One concludes that their conclusion that the program is working is a totally unwarranted conclusion because it isn't based on any observation that has any relevance to any acceptable cause or basis for the program in the first place. The SBA conclusion is presumptious and establishes a casual link that may or may not apply.

Considered important but not included in this 1973 Analysis:

- --Historical dependence of the forest product industry on Federal timber
- --Comparison of Federal timber sale bidding confrontation: small vs small, large vs small, large vs large
- --Mergers and acquisitions in the forest product industry
- --Comparison of timber purchasers as to manufacturers and nonmanufacturers, to more closely define timber sold to the small manufacturer in contrast to timber sold to loggers that are affiliated with large business (PTPG comment: most nonmanufacturers are and were not affiliated with large business)

Summary of Findings & Conclusions

It should be noted that the present program comes from a December 29, 1971 Interagency Agreement between the Small Business Administration and the Department of Agriculture (United States Forest Service) and that this study was completed less than a year and a half after that date and the delays in the program start. There was not a very long time frame to asses the program.

On page i the discussion about the amount of timber purchased by "small business" is apparently not documented anywhere. There is no indication that such reduction in volume purchased by "small" has any particular relevance to competitiveness. It is not necessarily that any firms went out of business because it couldn't purchase timber---it could well be that they didn't purchase timber simply because they went out of business for some other cause. The Rickard 1975 Study conclusively proved that the loss of firms was in the 100 group and it is reasonable to believe that the reduction in timber purchases noted in the Analysis "small" group was actually caused by a reduction in purchases from the "truly small" group with less than 100 employees.

At the bottom of page i it is noted that between 1958 and 1967, the number of sawmills and planing mills declined but the number of logging camps and logging contractors increased, and that the size of the logging firms was smaller than generally of the mills. This would not on balance seem to be any indication of small operators in the "timber industry" being unable to compete. One would assume that both small mills and logging contractors would seek public timber. Again, the Rickard Study clearly showed that from 1967-1970 the indicated declines were actually in the under 100 group. It appears from this Analysis however that if you look at all forest industry groups between 1958 and 1967, there wasn't actually much reduction in total firms, but rather a eneral shifting to some extent in the composition of the industry. The SBA Study notes 29,352 firms in 1958 and 27.864 in 1967.

On page ii, top of the page, since the value added went up dramatically per firm while 5,000 sawmill industry firms went out of business, from 1958 and 1967, it would appear that the ability to buy timber competitively and process it profitably was not a contributing factor generally to the demise of these firms. The figures shown here are real constant dollars since they have been deflated and consequently the 80% increase in value added over the period is not including inflation.

On page ii, Paragraph four, it's noted that during 1967-1971 at least 68 firms were merged or acquired by 14 large companies. Over this five-year period that's only about 14 per year for the whole United States, which is a rather nominal and inconsequential number. Bear in mind that this Analysis itself identifies 29,352 firms in 1958 and 27,864 in 1967. From these figures the decrease of approximately 1,500 firms over 9 years, i.e., 167 firms per year, was only nominally contributed to by mergers and acquisitions. Also note that the annual decrease in firms, i.e., the 167 per year approximately, is something like a half of one percent of the total per year, also a nominal figure.

On page ii the reason given for raising the 100-employee standard to 250 in 1959 was to bring it into line with the standard used for granting loans. That was no reason at all. The loan standard could as well have been reduced to bring it in line with the standard used for the timber sale set-asides. No reason is shown for raising the 250-employee size standard to 500 in 1964.

On page ii, the lower half of the page, that a number of 1967-1971 figures are given. This time frame would compare quite closely with the time frame of the Rickard Study. Where Analysis declines are shown for the under 500 group the Rickard Study shows that the actual decline is in the under 100 group. When statistics are given in terms of sales dollars the same relationship will generally exist. Note however that in terms of annual sales, the percentage for "small" is defined by $5,000,000, increased between 1969 and 1971 (top of page iii). This suggests that either the participation of "smalls" may be an up and down thing or that the data on which these figures are based may not be reliable.

On page iii, second paragraph, this analysis attempts to emphasize what it refers to as the increase by the "industry giants". This is not a fair representation since the Rickard Study showed that the 100-500 group shared in increases in competitive advantage as variously defined. Even so, the increase by the supposed "industry giants" reversed between 1969 and 1971 (prior to the present set-aside program) and declined from 29% to 21% of timber sales. The percent of sales volume in the third paragraph is a similar deception since the definition of small is the 500-employee standard, the reverse increase in sales volume acquired by small between 1969 and 1971 is referred to as "slipped again" and the large business proportion is given only between 1967 and 1971 without indicating what happened in the meantime, i.e., probably rising to a high point in approximately 1969 and then declining between that date and 1971. None of these figures give any indication of cause. They are just recitation of supposedly accurate statistical data on sales, percent of timber purchased, etc., and correlating that data with an arbitrary size standard. The following paragraph on page iii shows as the Rickard Study did, that the impact to the extent it occurred negatively on small business was in the less than 100 group, and that the 100-249 group increased its share of timber dramatically between 1967 and 1971.

The following paragraph, i.e., the third from the bottom, indicates that the 250-400 group and the 500 plus group shared in a reduced share of timber purchased between 1967 and 1971. This would seem to put them in the same group. The fact that the 100-249 group increased would seem to preclude the notion that size was a cause of the decrease experienced by the 250-499 group. The identified heavy increase in the timber share purchased by firms with 5,000 or more employees would seem to be the identification of a differential within the large group and have little relevance to where the size standard should be established.

On page iv, the second paragraph, is indicative of the deception of inadequacy involved in the 500-employee size standard. Here by this measure the 250-499 group ranks second only to the 5,000 plus group in the "success ration" in terms of percentages that were successful.

This seems to be a rather meaningless parameter, but in any case the paragraph goes on to point out that the 500 and above group had a higher percentage of success than the under 500 group. This bottom line indication that the report favors 500 explicitly by this parameter acknowledges that it would be favoring protection of the second most powerful group, i.e., 250-499, even though it's clear from this statistic that the group is more successful than the 500-5,000 group.

Paragraph 3 on page iv is interesting to note that, under the previous program, between 1966 and 1970, when set-asides were established extensively by someone's determination of "need", there was what the Analysis refers to as a "trend" toward increased sales going to the smallest size firm with less than 50 employees. This means that most of the set-aside sales under the previous program went to these truly small firms, because it was recognized that they were the ones that may have needed help, rather then the ones with over 100-employee firms.

Analysis of Selected Factors

On page two, the second paragraph from the bottom, it is interesting to note here that difficulty in implementing the original SBA progr is blamed on the lack of a precise definition of "a fair proportion". No men ion is made of the problem caused by the lack of a precise definition of "small business". Since effectiveness is referred to, presumably the 1959 standard o 250 at least is implicitly assumed in this context and possibly the 1964 sta dard of 500 is implied when the authors refer to the method of establishing s t-asides as being "not always effective". In any case it's presumptuous to bl me any failing of the original program simply on the lack of a precise definit on of "a fair proportion" when no basis has been established as to whose f ir proportion was being considered.

On page two, the merger and acquisition activity in the 196 s is said to have been "the elimination of healthy economic competition". Thi is entirely presumptive and is based on no evidence whatever. A change in he makeup of the industry does not imply elimination of competition and one w uld be hard pressed to show evidence that there's a lack of competition even tod y in 1980. No mention is made here that, although there was some increasin concentration in the timber industry in terms of a reduced number of total op rators and an increase in the proportion of total production attributed to t e largest 20 or the largest 50 companies, etc., there's no recognition of th fact that relative to any other major industry, the timber industry was and sti l is extremely unconcentrated. And no acknowledgement is given to the possib lity that this was simply an inevitable and necessary readjustment of the struc ure of the industry as it adapted to changing external economic forces, i.e., su ply and demand in the broadest sense.

Everything in this portion of the Analysis refers to large and small under the presumption that 500 employees is the point at which these differences that are ascribed to large and small actually occurred. This is not the case and that has to be the main criticism overall of this SBA Analysis.

On page 9, if you look at Table 2 for Regions 1, 3 & 4, which is referred to on page 9 as being "as close as we can get to national totals for th eindividual years in the base perios; it is considered at least indicative of the national figures.". It appears that there is no significant change in the small business proportion between 1966 and 1969, being percentages of 44.4, 55.5, 41.5, and 42.4. It's only in 1970 that the percentage drops and that one single year's drop would not seem to be any valid basis for instituting a new set-aside program as it could well have been a single year phenomenon. 1970 was a very poor year in the timber markets and for that reason many small business operations may have cut way back or shut down in response, which could very well be the cause of that decline. The Chart does not at all support the text conclusion in the fourth paragraph on page 9, that "despite the year to year variation, the overall trend for small business was "substantially downward." There is no indication of a "substantial downward" trend.

On page 10, in the third paragraph of the page where there is a discussion of the growing scale of operations in the industry, it's implied that the increase in value added is strictly due to the increase in the average size of firms. Size of firm and thus total output is only one factor in the possible explanation in value added, and to presume that this average increase in value added is entirely indicative of size is incorrect. The general profitability of an industry is what creates added value and would take a substantial analysis to define exactly where the entire increase in added value came from. It is clear that if in real dollars end product value is increased proportionately more than costs, the value added would increase without any change in industry size with respect to the average sized firm. This is not to say there was no increase in firm size because undoubtedly there was, but the increase in value added is probably not a valid indication of the degree of size increase. Note that, in the logging camps and logging contractors category, SIC 2411, the value added by manufacture there also increased, and the value added per firm in constant dollars increased as well, even though employees per firm declined, the opposite of what happened in sawmills and planing mills, SIC 2421, and the number of companies increased, also the opposite of sawmills and planing mills. Thus on the basis of these statistics, one would conclude that even though there were a great many more on the average smaller logging camps and logging contractors in 1967 than in 1958, value added increased. Since that's the case, the fact that value added per firm in constant dollars increased in sawmills and planing mills is not in itself any measure of increase in the average size of firm, except as size is measured by value added - but not as size might be measured by volume of production. Note that on Table 3 there were three of the six individual categories, i.e., 2411, 2426, and 2429, where employees per firm declined, total firms increased, and value added per firm in constant dollars also increased. Value added in all categories increased. It's particularly important to look at the compilation of five forest products industries where employees per firm overall didn;t change much but declined nominally along with the small decline in number of companies and again a substantial increase in value added per firm.

On page 12, in the first paragraph, the Analysis says it's important to note the trend in "competition" and then they cite number of companies by year. This is entirely presumptive. An industry can have fierce competition sometimes with fewer companies than the same industry might have during another time with more companies. As is well known, competition itself tends to sometimes eliminate the unsuccessful competitors, so that decline in number of firms is in no way a direct indicator of lack of competition. Lack of competition would tend to bring about an increase in the number of firms moving in to take advantage of such a situation.

This view of competition tends to be borne out by Table 4 where during 1967-1970, as is pointed out in the text, logging camps and logging contractors were the only group that had positive value added per unit in constant dollars. This is the area where large increase in firms was recorded. All the other categories which either had decreased in number of firms or rather nominal increased had negative value added during those years, which speaks to the existence of very intense competitive conditions wherein profit margins because very tight or negative. It should also not be overlooked that 1970 was a very poor year so that as in all cases these point to point comparisons have to take account of the general condition of the industry in specific years for which the statistics are identive. The status of the industry in 1970 is probably the main reason for the decline in value added perestablishment as between 1967 and 1970 for the four industry categories wherein that occurred. This is again and still with reference to Table 4.

On page 13, the fourth paragraph, i.e., the summary paragraph, is a misleading statement. It fails to note from the article's own data that (a) the share of national forest timber going to some categories of "small" business has been increasing during some periods depending on how you define small (recall the analysis observation on page iii that firms with 100-249 increased their share between 1967 and 1971). It fails to note that thousands of small firms came into business as well as went out of business in 1958. And it fails to note that the substantial number of firms acquired between 1967 and 1971 were a relatively nominal number in terms of the total or even in terms of the number of firms that disappeared from the industry.

On Page 13, it's important to note that in the category Factors Considered In Determining Size Standards, the basic factors which the SBA identifies as being employed in establishing the size standard indicate nowhere any measure or indication of damage to "small business". All of the factors are generally descriptive economic measures which give no indication at all as to whether or not some size category within a given industry is suffering from size-related competition. This is an important point because it goes to the point that the size standard is unrelated to the presumed problem which it is allegedly established to solve.

Table 9 shows that the percent of sales purchased in the 1,000-5,000 class declined from 1967 to 1971. It was noted by the text, however, on page 33, it is the under 100 group that lost a share in terms of percent of sales. The 100-249 group increased. The 250-499 group increased. The 500-999 group increased substantially. This does not seem to be a size-related phenomenon except in very smalls, i.e., less than 100.

On page 23, under the heading Volume of Federal Timber Purchased by Firm Size Class, it is noted that the volume purchased is more important than the number of sales, etc.. Table 11 on page 25b shows that the real losses occurred in the 0-49 and 50-99 groups, that the 100-249 group increased its share substantially, that the 250-499 group lost somewhat, that the 500-999 group pretty well held steady but lost a little bit, and that the 1,000-4,999 group lost a substantial share from almost 7% to about 1%, and the 5,000 and over group gained substantially. If the 100-499 group was considered as a single group instead of two parts, it would show an increase in the share over the period 1967-1971. Performance of the 100-249 group ullustrates clearly that, on the basis of size, there is no need for protection of any group larger than 99.

Table 15, page 30a, there should be serious wonder about what significance this percentage of successful bids has. The Analysis could reflect bidding scale or selection of sales for which a party is truly competitive as well as anything else. There doesn't seem to be any real pattern here except that the very large companies tend to have in years 1970 and earlier a somewhat higher percent success than the others. This does not hold in 1971, however, There the highest success was in the 250-499 group.

Table 16 & 17 seem to indicate a rather variable percentage of the set-aside sales purchased by the different size groups with different groups predominating in different years. There really isn't any particular pattern here that's of any value to note. The one factor that is relevant is that the smaller firms' percentage of volume is greater than percentage of value which would indicate that the larger portion of "small" business, i.e., the 250-499 group, buys the more valuable per board foot set-aside sales generally.

On page 35, it notes that the Analysis has not shown that lack of timber supply has been the cause of small firms leaving the timber business or being merged. It goes on to say that the presumption, however, is suggested by the fact that small firms have gone out of business during the same year that their share of national forest timber supply dwindled. This would suggest that this is an obvious corollary, not a causative factor. When a firm goes out of busines, it ceases to take its share and consequently the share is inevitably going to dwindle, even if it's a result of the firm's going out of business rather than being the cause.

ATTACHMENT J

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OVERVIEW OF THE 1976 SBA STUDY
AN ECONOMIC ANALYSIS OF THE SMALL BUSINESS SET-ASIDE PROGRAM INVOLVING NATIONAL FOREST TIMBER

1975 Senate Hearings requested the SBA to conduct a study of the Program and its Size Standard. SBA, with specific guidelines, entered an $80,000 contract with a consulting firm which produced a report to the SBA dated March 22, 1976. This report was not released by the SBA until December of 1976. The report was considered to be such a "whitewashing" of the program in academic circles and among forestry economists, that it was thoroughly discredited and found useless. The study ignored the impact of the size standard and was based primarily on the results of a questionnaire sent to program-eligible companies who are the beneficiaries of the program and obviously had good things to say about the Program.

This SBA report takes qualitative, subjective data derived from a questionnaire, assigns to it certain arbitrary scores, combines it with limited selected data from other sources, draws some conclusions based on assumed relatioships, and presents the whole as an economic analysis.

There is little in the report that could be considered analytical. It is a presentation of the self-serving opinions expressed by the respondents to a questionnaire sent to a selected sample, combined with opinions of the analysts. The results happen to collaborate opinions held by the Small Business Administration.

To facilitate review of the SBA report, comments follow the page sequence of the

SBA report.

On the first page, the objective of the study is given. The objective is sufficiently loose in its definition to enable easy satisfaction. It requires "...to study...", and "...an analysis...". It should be noted that the analysis called for is supposed to be "...by size class...". Since the only size class which is considered to any degree at all is the currently defined small business category, the analysis of purchasers of national forest timber has not in fact been carried out "by size class". Had it been done by any reasonable definition of size class, a substantial amount of information would have been developed which would contradict many of the findings of this report.

A question arises on page 6 as to why only fiscal years 1974 and 1975 were available for computer analysis in terms of the Small Business Set-Aside Program. The explanation given is not very complete or satisfactory. Neither is it understandable why the only other years examined were 1964, 1967 and 1971. The reasons for this selection of years are not evident.

The years selected avoid the last year of the Rickard Study, i.e., 1970. They also avoid the peak demand years of 1968 and 1973. The years 1974 and 1975, except for early 1974, were years of declining short-term demand. The year 1971 was a fairly low demand year. The years 1964 and 1967 were prior to the current SBA program of course. The year 1967 was another low year in the short-term cycle as far as demand goes. It is clear that the years that are used are years that generally avoid the years of heaviest forest products demand. And although they are not all the years of lowest demand, they include the years of lowest demand. The overall effect is to exclude from the analysis those years when competition for timber was the keenest and thus the years when the effect of the set-aside program, since that program is supposedly designed to deal with problems of compettion, would be best observed.

On page 7, the questionnaire which is noted, was supposedly prepared because the litigation material and responses to the SBA size classification hearings represented only firms that were strongly motivated one way or the other by the program. The questionnaire obviously, since it was only sent to the small business community, was limited to those firms that were strongly motivated in only one direction rather than both. It is difficult to understand how this could resolve the problem of bias.

Page 10 discusses the program SBANAL which uses both magnetic tape input and card data input. The magnetic tape input is described as including all national forest sales over $2,000 for 1974 and 1975, and the card data input is described as including all national forest set-aside sales of $2,000 or more for calendar years 1964, 1967 and 1971. The latter includes a sample of all sales and thus has some non-set-aside sales included. This mixture of sampling should be kept in mind when viewing the results reported for the SBANAL analysis. It makes comparison of any results for the three early years questionable, when looked at in context with the results for 1974 and 1975.

On page 14, the concept of a bid value ratio of the second bidder is introduced. This is a obfuscation factor, for there is no reason whatever to be interested in the bid offered by the second bidder - except of course to observe that there are a few or a lot of bidders on a given sale that followed the competition close to the end of the bidding. This bid value ratio relating the first bid to the second bid is absolute nonsense.

On page 14 there is discussion of average number of bidders per sale for open market sales as compared to set-aside sales. There of course is no reason not to compare such statistics. But one must remember that the open market sales that were included in this analysis were a "sample" in the early three years, whereas all of the set-aside sales were included. One should be apprised as to the basis for selecting this sample, since it is partial, whereas the sales sampled for the SBA portion of the analysis were 100 percent.

Much text is given over to detailed discussion of mechanical procedures in this report. The details of number handling are so profuse that it's difficult to follow the logic of the analysis.

On page 15, the first paragraph, the discussion of an error potential does not correct the error cited and is inconclusive with respect to cause. It has to do with the bid value ratio. It would have been more useful to correct the error rather than to cite possible causes.

On page 16, in discussing the original 20% sample of the national forest bidder lists, for purposes of the questionnaire, it is indicated that those lists were reviewed to remove, among other groups, firms that "are no longer in business". In the same paragraph it states that once a samplehad been selected, the firms were classified in terms of, among other groups, firms that were "out of business". This is contradictory. If the bidder list were reviewed to remove firms out of business, it doesn't seem there would have been any need to classify those remaining in the sample to account for firms that were out of business.

In the last paragraph on page 16, the development of the revised questionnaire sample to include only small business describes the resampling of the bidder lists for the selection of small business representatives to replace firms in the original sample that were identified as large business, out of business, or unknown. On this basis, the total should add to the same in the original sample as well as the revised questionnaire sample. However, Table I, summarizing the original sample, totals to 865 (825 active plus 40 out of business). But Table II, showing the revised questionnaire sample, totals to 855. Perhaps there is a reasonable explanation, but on the face of it the method does not seem to be corroborated by the resulting totals.

It should be noted that in developing the revised questionnaire, only manufacturers among the small business replacements were accepted. Thus the revised questionnaire sampling is a two-part sample, the first of which included non-manufacturing small business and manufacturing small business (after large business, out of business, and unknown were removed); and the second part, which included only manufacturing small business. Thus the sample in its final form was biased not only to exclude large business, but also to exclude, or at least minimize, the impact on non-manufacturing small business. There is nothing in the SBA Act which calls for SBA to focus on manufacturing small business interest to the disadvantage of non-manufacturing small business. But as a result of the sampling technique employed, the interests of manufacturing small business are more heavily represented and purposely so, than the interests of non-manufacturing small business. This was done purposely as is indicated on page 17 in the paragraph at the top of the page. It says there, "This intentional bias was interjected to assure a significant and representative response from the small business manufacturers to whom the program is specifically aimed." Clearly such a bias is guaranteed to assure a non-representative response, since the manufacturing portion of small business is over-represented. There is no evidence to the effect that the program was specifically aimed at the manufacturing segment of small business.

Table II, Region 6, under the revised questionnaire sample, the non-manufacturing small business is 41% and the manufacturing small business 59% of the questionnaires mailed out, in spite of the biasing of the sample in favor of manufacturing small business. This leads one to wonder what the proportion would have been had the sample not been biased. Perhaps the non-manufacturing segment of this so-called small business group is much more important than the SBA is willing to recognize.

On page 20, the beginning of the last paragraph, it says, "Since the questionnaire recipient selection was random, some of the response summaries would be biased if every response to each question per region was analyzed without some consideration. Therefore, each question was intensively studied and, when necessary, certain sorts were performed on the questionnaire data base prior to analysis." It should be obvious to the most casual reader that the questionnaire recipient selection was not random, as is evidenced by the previous comments in this overview. This appears to be the establishment of some rationale for biasing the analysis of the responses, even though the responses originated in a bias. In the example of this situation cited, the distortion is slight, but nevertheless it causes the analysis of percentage that bid on national forest timber sales to be limited to those companies who were aware of the SBA program. This would appear to give a misleading answer in that the resulting percentage of respondents bidding on national forest timber would not be the percentage of the sample, but the percentage of a selected part of the sample, and thus would not indicate percentage dependency of "small business" on the bidding for national forest timber.

In the descriptive material on page 24 it is said that, "In the northern Rocky Mountains, including Montana and Wyoming, lodgepole pine is another dominant factor in the species composition. This species is generally regarded as a hinderance (sic) to management as it is usually found in an overstocked condition[2/]." This reference footnote is to the Forest Service Resource Bulletin INT-10. That bulletin refers to the situation in 1970. It is misleading as a 1976 generality.

There are some rough generalities in the descriptive section. For example, on page 27, it says the eastern half of Washington and Oregon is referred to as the Inland Empire. That description is not quite complete. It also says that the area east of the Cascades has a timber type similar to types found in the southern Rocky Mountains of Arizona and New Mexico. That's not accurate either, unless your definition of similar is fairly broad. It goes on to say that the "Inland Empire" in combination with the western Douglas-fir region for Washington and Oregon, "...produces more softwood sawtimber than any other region in the United States." Of course any area in combination with the western Douglas-fir region would produce more softwood sawtimber than anyplace else in the United States.

On page 36, the Rickard Study is cited as one reference for the contention that one of the reasons for the stimulated discussions on the SBA program was that the numbers of bidders was diminishing on national forest sales. This was not the conclusion of the Rickard Study. It did identify fewer firms over time, but did not analyze the number of bidders on Forest Service sales.

On page 36 and the top of page 37, some of the factors supposedly affecting the diminishing number of prospective national forest timber purchasers are listed. There are five factors listed but no substantiation in fact or evidence is given for any of them.

On page 37, the citation to Van Arsdale refers to the principal defect in the old SBA program as the vagueness of the term "need" and the fact that rejections of set-aside sales could be made on a differing interpretation of "need" and that there was no requirement for a specific justification for refusal of set-asides. The meaning of the use of the words underscored cause wonder.

On page 40, the question asked under "Micro-Historical Review of Present and Past Conditions" is, "...who are the purchasers of Forest Service timber sales over $2,000 in appraised value, by size class of concern, by area of country?" No analysis is presented in this SBA report by size class - consequently, the question is not by any stretch of the imagination answered.

Table III is titled as being from the USDA - FS Bidder List Sample and Estimated Population, but it's actually from the prospective bidder list. This is illustrated on page 44, clearly, where it notes that approximately 75% of all estimated prospective timber purchasers of national forest timber are within Regions 6, 8 & 9. This in itself is confusing, since one can't help but wonder how there could be so many "prospective" purchasers in the northeast and in the south. It makes you wonder what the basis was for classifying firms as "prospective bidders".

It would seem that having a listing of this sort to start with, it would have made a lot more sense simply to tally the full 4,125 firms rather than to sample at 20%. With the firms identified, they certainly could have been canvassed for a study of this type. The responses wouldn't have been complete but the resulting sample would have been so large as to remove any substantial amount of uncertainty from the conclusions. They probably would have found that many of these prospective bidders in some parts of the United States weren't very serious prospects.

It should be noted on page 44, in the question posed, that the historical dependence of the forest products industry on Forest Service timber - "by size class of concerns", by area of country is sought. In pursuit of this question the report seeks to find a level of dependence of both large and small business on the timber volumes offered from national forest lands.

Subsequently on page 46, it's noted that, "Our own hard data generated from the questionnaire will deal with the present. It should also be stressed that the following data are not delineated as to size class of concern or to detailed Forest Service regional boundaries." Clearly no consideration is given to the answer of this question by size class.

There is a great deal of rhetoric in this section that doesn't make a great deal of sense. On page 45 for example it is said, "In summarizing the litigation material, we must keep in mind the impetus that has caused people to respond and reply to the SBA size class hearings and share reevaluation proposals." (emphasis supplied) The litigation material referred to has to do with testimony from the Duke City Lumber Company case. The report also refers, in the previous paragraph, to the size class hearings in the same context. The size class hearings are not litigation. But even in that expanded sense, the reevaluation proposals are not litigation either.

One has to wonder why one would be more concerned about the "impetus" that has caused people to respond in a situation where they may be under oath as in the Duke City case, and not be concerned about the response from a sample that was selected with intentional bias and to which the responses are not given under oath.

The paragraph that begins on page 45 is saying that there's no point in quoting testimony given by members of both large and small business because of the "intrinsically biased nature" of this information. Yet the same paragraph recognizes that the various letters and documents referred to reflect personal testimony that is indicative of the "very strong feelings by the forest products industry with regard to the issue of dependency on Forest Service timber." At least both sides would be heard from! And it is also indicative of the presumptive nature of this so-called study in that it refers to "...the two size classes...". This rather implies that there can only be two size classes and also implies that the current distinction between the two is somewhat incontestable. The analysts were certainly aware that there is a difference of opinion on not only that the size class distinction between small and large should be, but as to whether there are only two size classes. A sincere effort to study this question, by size class, as is required in the question previously posed, should certainly have taken account on the view in the industry supported by many that there are more than two size classes.

On page 47 (unnumbered), the third paragraph indicates that the identified timber supply of a purchaser was not reduced by that purchaser's subsequent reselling of roundwood. This means that those subsequent volumes of roundwood resold would be counted twice as national forest timber supply and thus contribute excessively to the indication of national forest timber dependency (by the small business measured) because federal timber dependency was determined, "...by dividing the volume of timber reported cut from Federal sources plus his estimate of roundwood purchases that came from Federal sources plus his estimate of roundwood purchases that came from Federal stumpage by his total timber supply." That last is from the last paragraph on 46 and the first paragraph on page 47.

Table IV on page 48 indicates that in 1967 the respondents were 55% dependent on federal timber. For perspective, reference to the publication "Oregon Timber Industries, 1968", a joint study by the State of Oregon Department of Forestry and the PNW Forest & Range Experiment Station, indicates that (page 8) 55% of the log consumption by everybody in Oregon came from federal lands, i.e., national forest and BLM. Thus one might conclude that the dependence is about the same in total as it is in small business and thereby duduce that the dependence of large business on federal timber is essentially the same as the dependence of the so-called "small business". This 55% figure from the publication "Oregon Timber Industries, 1968", is for sawlog consumption (page 17), 56%, and for veneer and plywood log consumption (page 28), 54%. Reference to the publication "Oregon Forest Industries, 1972", a joint study by Forestry Extension, Oregon State University Extension Service and the PNW Forest & Range Experiment Station, shows (page 16) that in 1972 Oregon's total dependence on federal logs was still 55% and thus unchanged, that the dependence on forest industry logs (35% and 34%) was essentially unchanged.

The publication "California Timber Industries, 1968", a joint study by the California Division of Forestry and the PNW Forest & Range Experiment Station, indicates (page 20) that sawmills received 42% of their logs from national forests (other federal is nominal); the California dependence of veneer and plywood mills on federal timber is (page 102) about 38%.

Thus the total California dependence on federal timber is somewhat less than the dependence in the small business category in the entire west. Unfortunately, there is no breakdown of the results from the questionnaires as to regions of the west, and this makes direct comparisons pretty much impossible, unless we could have access to those questionnaires themselves. This might be something to consider. In any case, Oregon is a very direct comparison and would suggest that overall there's not a great deal of difference in dependence as between large and small business.

The publication "California Forest Industry Wood Consumption & Characteristics, 1972" (PNW-52) indicates (page 13) that dependence on national forest timber was 40% in 1968 and 41% in 1972 in California overall, thus indicating no substantial change in dependence percentage. In the same report (page 31), the dependence of all mills on federal timber, i.e., national forest and BLM, is indicated in 1972 to be 42%.

For the State of Washington, the "Washington Mill Survey, 1968", a joint study by the State of Washington DNR and PNW Forest & Range Experiment Station, shows (page 67) that 27% of the logs consumed by sawmills in Washington were from federal land. The same publication (page 89) shows that 47% of the logs consumed by veneer and plywood mills in Washington were from federal land.

The same publication in 1970 (Washington had more frequent republications than the other two states) indicated (page 5) that something over 17% of the log supply for all mills in Washington came from federal lands.

Thus all the sources available suggest that the dependencey has not changed substantially from year to year in recent years but that it is quite different from state to state. It's reasonable to estimate that in the interior portions of the west, the dependency on federal lands is greater than on the coast itself. Thus the less than average dependency, as compared to the questionnaire recipients in small business, on the coast might tend to be offset by a greater dependency in the interior of the west.

These comparisons perhaps raise more questions than they answer, but they certainly provide a basis to question the assumed increase in dependence on federal timber proportionately, and also to ask for the basis for identification of the indicated 55% dependency in 1967 with respect to differences within the area surveyed. Oregon can be cited as being comparable overall, raising the question as to whether or not the dependency of small business is actually any different than the dependency of large business on federal timber.

On page 49, back now to the SBA report, the area analysis begins, attempting to establish some measure of dependency on national forest ownership on a basis of acreage. The calculation is essentially meaningless in that acreage of commercial forestland means little when the inventory standing on those acres is ignored and when the productivity even for the long term is ignored. Certainly in the immediate and near term, inventory is the key to timber supply, not acreage. In the long term, acreage, assuming some index of management and productivity capability, is significant. This analysis relates to neither.

The conclusion on page 51, for example, that Regions 5 & 6 are the third most dependent area in the country on national forest timber, and that Region 10 is most dependent, and that Regions 1, 2 & 3 are second in dependence, is strictly based on acreage and has no relevance at all to the actual availability of timber. It happens of course that Region 10, being entirely comprised of national forest timber, is almost by definition the Number One dependency area.

On page 52, the last paragraph, the report goes on to say that, "Another factor which may indicate the dependency of the forest products industry on National Forest timber is the species distribution among land ownerships." It would be the more useful if this observation were extended to include the inventory per acre of those various species.

Page 54 provides probably one of the most incredible sequences in the report. It commences to claim that Question 1 of the questionnaire, i.e., "Does your company bid on National Forest timber sales?", is helpful because it helps evaluate industry dependency because it is indicative of industry interest in national forest timber sales by region. Why, one must ask, is it necessary to even question the issue of industry interest when the questionnaire is directed only to people "selected from the Forest Service bidder lists." The question might have some relevance to interest if the questionnaire had been sent to firms regardless of their known interest in Forest Service timber.

On page 55, Table VI shows for the various regions, two items, i.e., a land ownership dependency ratio and an interest in Forest Service sales. It should be noted that the land ownership dependency ratio would be relevant to all industry, not just small business, and not just those that are interested in Forest Service timber. The item "Interest In Forest Service Sales" coming from the questionnaire is relevant only to those segments of the small business industry that are know to be interested in and thus to some extent dependent on Forest Service timber. The table shows, or claims to show, a discovery, that being that the regions where the higher percentage of small business bids on Forest Service timber are the regions that have the larger percentage of their commercial forestland in Forest Service ownership. Or stated another way, in areas where a larger percentage of commercial forestland is Forest Service, you find a larger percentage of small business (or any other business) bidding on Forest Service timber. It doesn't seem that it would require a strudy to come to that conclusion.

On page 55, Question 4, where the respondent is queried as to whether he thinks the SBA set-aside program is essential for the continued operation of his company, is said to be indicative of bidder interest on national forest timber sales. That probably goes without saying. There is question whether the answers to Question 4 reflect the level of activity within a region as is indicated on page 56.

On page 56, the report says, "Eighty two percent of sampled bidders on National Forest timber, who are aware of the set-aside program, agree that the program is essential to the continued operation of their business." One could rephrase this statement to more accurately say, Eighty two percent of small business known to be interested in national forest timber favored a program which gave them a bidding advantage on that timber. That's a more objective analysis of the response.

It is interesting to note, on page 56, that Region 9 had a 61% response indicating a set-aside program essential to the continued operation of their business, and Region 8 an 82% response. Here we have the south at 82% claiming to be equally dependent on national forest timber for their survival (according to the respondents) as are the western states. And the northeast and lake states almost as highly dependent at 61%. It's clear that the report's statement that these figures "do not always clearly lead to conclusions" is itself an understatement.

Page 57 indicates that response to questionnaire Question 16 indicated no differences among regions as to the percentage of their required raw material purchased from various sources. Even the authors rejected this. The fact that such a response is possible should certainly raise serious questions about all the responses in the questionnaire, since they come from the same respondents.

Page 59 says that the set-aside sales tend to result in a greater return to the government. There is no evidence of this. There is substantial evidence that the exact opposite is the case. Set-aside sales tend to result in less return to the government.

The items listed for analysis on page 60 could have included price received per thousand board feet, adjusted for grade and logging cost. That would have given a true comparison as between set-aside sales and unrestricted sales. It is said there in the first paragraph that, "...only the bid value ratio was suitable for analysis of competition between large business and small business as well as competition between small businesses." This could not be the case. The other items mentioned certainly could be used for comparisons as well as the actual dollar value per MBF.

With respect to average number of bidders per sale, this item is meaningless without some consideration to the activity of the bidders in the actual sale. In many Forest Service sales, a number of bidders qualify but don't pursue the competition. These are often bids put in for the purpose of picking up sales if the competition is not keen, or for the purpose of bing able to bid if the person who put in the qualifying bid wants to bid at the time of the sale. But numbers of qualifying bidders are not indicative of active bidders. The report's conclusions in this respect are of no value.

In Table VII, the range of bidders in high, medium and low categories is fairly broad so as to obscure differences, and furthermore the use of averages lumps together sales of high and low bidder counts. Also in the same table, the comparisons between regions, as between open market sales and set-aside sales, are clearly not on the same basis since the open market sales are limited to the average of fiscal years 1974 and 1975, whereas the set-aside sales are the average of calendar years 1964, 1967 and 1971 and fiscal years 1974 and 1975.

On page 61, the authors say they are, "...not suggesting a direct relationship between the number of bidders per sale and competition." - and then claiming that the number of bidders is "...certainly an indicator and should be viewed in the overall analysis of this question."

On page 63, it is concluded that in all regions except Region 10 the average number of bidders is higher on set-aside sales than it is on open market sales. Aside from the forementioned fact that the number of bidders as they calculated it is meaningless, one would question the relevance of such an observation, if it were true, of active competitive bidders, when the ability to bid on SBA sales versus open market sales, is artificially restricted. Perhaps the SBA set-asides cause certain bidders to abstain from the open market sales because they get sufficient volume on the SBA sales. The upshot of that could be to cause the larger small business companies, which are the more aggressive bidders anyway, to get their timber from both SBA sales and open market sales. The whole approach is of no value.

On page 63 starts a discussion of the "second bid value ratio". This has no merit. The ratio has more to do with the level of the bids and the increment of their increase in the bidding process. Since competition is identified as being relevant to the closeness of the first and second bids, very high levels of competition could be indicated by sales where only a "token bid" is made in order to break the tie created when a number of bidders qualify at the appraised value for a given sale but don't want to compete. Obviously those sales are not competitive but they would get extremely high "second bid value ratios".

This particular analysis is based, as the authors say, on a very "simplistic" concept and furthermore one that is patently non-indicative of competition.

On page 64, it is said that the most apparent observation from the rankings derived is that small business in Regions 2, 3 & 6 can and does compete with large business on open market timber sales. This is an interesting statement but it too is based on the nonsense standard previouly discussed.

In Table VIII, the results are worthless. The lack of comparison exists in the comparison of open market sales and set-aside sales and that they're not based on comparable years.

On page 65, it is said that the regions having a high auction percent were in the high competitive level ranking, and those with a low auction percent (less than 33%) were in a low competitive ranking. It must be obvious that this is because in oral bidding you only bid what you need to bid to get the sale. Thus the difference between the first and second bidders tends to be small, and the "second bid value ratio" ends up being fairly high. It's only in sealed bids that you leave a lot of money on the table. These can be very competitive, but because of their nature, provide substantial differences between the first and second bidders and give a low "second bid value ratio". It should be obvious that this particular measure is of no value in measuring the level of competition.

There is a great amount of justifying rhetoric in this section that does not really lead to anything useful.

The section on unsold timber is not particularly useful measuring competition. On page 68, the report notes that there may be many reasons for what the report found to be a lesser amount of unsold timber on the SBA set-aside sales - including the ability of large business to bid on such sales if they're not bid on by small business. Obviously there cannot be claimed to be a lack of interest in open market sales by large business if it is the purchase of sales by large business that has triggered the SBA program. If the small business set-aside sales are more thoroughly purchased, it would suggest that there might be a difference in the character of the timber or perhaps in the appraisal process. Of course there is nothing here conclusive to that end, but if there is a difference in the amount of timber left unsold, there must be some explanation and it can't be lack of interest in timber in open market sales in the presence of a triggered set-aside program.

On page 71, the questionnaire item relating to where the greatest competition comes from, i.e., large business, small business, or both, is addressed. Most of the respondents apparently felt the competition was from both large and small business.

In the section on the effectiveness of the SBA program, it is said that, on page 76, the analysis was left "solely with reviewing the data as presented in the previous section on competition and subjectively determining whether or not the regional competitive nature is healthy." This appears to be a prime opportunity to ask the key question, i.e., why didn't they look into the record of how small business has maintained itself over the years as the Rickard Study did. This would seem to be a very direct and objective means of answering the question of effectiveness. Clearly, it's a means which the SBA had no desire to pursue because they know the answer from the results of the Rickard Study.

In evaluating sales (page 79), it is noted that deficit sales may also have had an effect on the situation, but that their data could not be segregated to identify deficit sales This is with respect to the unsold volume issue. One should certainly ask the question why the data could not be segregated to identify deficit sales. This would seem to be a very simple thing to do.

On the same page, it's noted with respect to the early SBA program that, "Small business was required to make its desire for a set-aside timber sale known to the Forest Supervisor or the SBA representative. Therefore, all sales that were offered reflected a direct need...", obviously not a bad idea. What could be better than for the SBA set-aside program to be structured so as to reflect the direct need of small business. Clearly, the unsold volume analysis, failing to reflect as it does changing economic conditions, the tendency for appraisals not to keep up with market changes, and that coupled with a lack of excalation provisions in west side Region 6, and other considerations, is unable to reflect or measure true competition in any effective way.

On page 81, the report says the SBA program since 1971, because it has put more volume into set-aside sales, indicates that it is better than the old SBA program because it "seems to assist the small business community in acquiring, systematically, its fair share of National Forest timber." This statement can only be logical if one assumes that more timber is the same as the "fair share".

The reason obviously, on page 82, for the lack of awareness in Regions 8 & 9 of the set-aside program is the unimportance of national forest timber in those regions. Those people just don't care as much about it because the national forest timber is not as significant there.

There are a number of pages here that refer to the questions asking whether or not the SBA program is offering enough volume or enough sales, and the responses are so obviously self-serving that there isn't much opportunity to be analytical about any critique of those responses.

On page 85, it is concluded that competition has been fostered by the set-aside sales program. This conclusion is clearly based on a set of measures of competition which were created by the report itself and which do not in any way effectively measure real competition for timber sales. Thus the conclusion has no substantiation in objective fact.

The section on Review of the Procedures and Implementation of the SBA Set-Aside Program starts on page 86. It tends to be fairly descriptive. On page 93, an "intrinsic problem" of the current approach to base share analysis is said to be that, "...small business attempting to enter a market area which had initially no requirements for Set-Aside Programs, would have to wait a maximum of five years in order to affect (sic) a change in the small business share analysis for that particular sale or market area." Clearly, the same has to be true of large business attempting to enter a market area which had no large business base share. And of course there is no provision, by the same token, where small business might leave an area, since there would be no provision for a large business base share.

It does not seem to be indicative of a non-biased attitude, to consider an impediment to increasing the small business base share quickly a "problem" when the objective of the program is supposed to be to maintain the small business share. The report does note, on page 93, that the SBA program, "...will artifically (sic) maintain this historical level (of small business)." (parenthesis added for clarification)

On page 94, it's mentioned that they did consider annual production or annual capacity as an alternate to historical sales to establish base shares. Whether or not capacity would be a disirable measure, it could be measured on some standard, of two shifts for example, and thus overcome the difficulty in measuring capacity indicated.

On page 104 it says in the next to last paragraph that, "...the Set-Aside Program was not proposed or directed to this sector (non-manufacturing) of the forest products industry..." This program was not proposed or directed to any specific sector of the forest products industry except the "small" sector. There is no justification for the program to favor one "small business sector" as opposed to another "small business sector".

In discussing the supposed responsiveness of the program as indicated by Question 2 & 3, i.e., awareness of the set-aside program and whether or not it's understood by the respondent, the report says on page 106 that the lower level of understanding found in Regions 8 & 9 is in line with the very high number of non-manufacturing firms. What it does not say, and which should be obvious, is that it's in line with the very nominal Forest Service presence in those regions. I think there is no justification to draw any conclusions that would indicate level of interest and understanding to be connected with whether or not the small business is manufacturing or non-manufacturing. This area of the report is generally very self-serving and transparent.

On page 114 is summarized the costs of the SBA program. I think it would be incombent upon the SBA, if they're going to put forth any estimate of cost, to make direct analysis in an appraisal fashion of the relative prices received for comparable timber under SBA restricted sales and non-restricted sales. In most areas the SBA influence is to reduce average prices. There should also be consideration to many hidden costs to the SBA and USFS is admineresting this program.

On page 115, it's indicated that the private sector costs of the SBA program are intangible. Obviously they're not intangible.

Page 116 refers to the program preventing the creation of an oligopolistic structure. The word he wants is oligopsonistic, i.e., with respect to buyers, not sellers.

Page 119, the report claims that competition has been fostered by the set-aside sales program which restricts competition to certain elements of the market. This is difficult to rationalize. It might well be argued that competition for the unrestricted sales has been accelerated since much of the market has been eliminated from the set-aside sales. There's nothing in the report that substantiates the claim that competition has been fostered.

On the same page it also is indicated that the small business share analysis is the most effective and efficient mechanism for evaluating the responsiveness of the program to small business need. That raises the question as to survival. A measure of small business survival might be the more efficient and effective mechanism for evaluating the responsiveness of the program. Such a measure, however, would reveal who was surviving and who wasn't and would indicate where the needy portion of small business actually is.

One would have to conclude that in this report which is said to evaluate the small business set-aside program, there is no consideration at all of any alternatives to the current program.

On page 120, in the last paragraph, it is said, "It is evident, that without the Set-Aside Program a portion of the small business sector of the forest products industry might not be existing today." One has to admit that many things might be. But there is no evidence presented in this report that the set-aside program has had any influence at all on the existence of any part of the forest products industry. And it is indeed curious that such a statement would be made when in fact the existence, i.e., survival, of particular segments of the forest products industry has not been once addressed in this so-called economic analysis of the Small Business Set-Aside Program.

One would think that if such a statement is in order as the final conclusion of this study, that the survival of firms would be considered important enough to be considered in the study itself. To put it another way, how could such a conclusion, with respect to the influence of the set-aside program on whether any portions of the industry might or might not be in existence, be in order when existence or survivability is not addressed in the study.

STATEMENT

Submitted by

Willamette Industries, Inc.

Carroll Cochran
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Logging and Woodlands

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February 18, 1982

Senate Small Business Committee Hearing
Hot Springs, Arkansas

Gentlemen:

Willamette Industries, Incorporated is a newcomer to the state of Arkansas having recently completed construction on a multimillion dollar plywood and lumber plant at Emerson, Arkansas.

Since this is a new plant, Willamette has not bid or bought any sales on the Ouachita National Forest, and we are not that familiar with the operations on this particular forest. However, we have for the past fifteen years been very active on timber sales on the Kisatchie National Forest in Louisiana. Willamette has found from its past experience on SBA sales from this area that several of the regulations on SBA sales are uncontrollable and tend to lead to problems for the government.

The 70 - 30 split is a major problem and could eventually have complete loss of control. For example; In Louisiana most of the sales are multiple products sales (pulpwood and sawlogs). If a small business purchased a sale with multiple products (logs and wood) and hauled the trees to their concentration yard in log lengths or tree lengths these would be mixed with other logs or trees already on the yard. Once these products are mixed on the yards with timber from other tracts, they would lose their identity and could be sold to major business, and no one would be able to verify volume actually consumed by the purchaser.

This policy is not in the best interest of legitimate small business operations or major business, due to the possibility that someone with no capital investment and no manufacturing facility could turn a fast profit to someone that did not qualify to bid on the sale. Also, any policy that is made should be made so that enforcement is simple and can be controlled whereas, in this case, there is no way to enforce a multiple products sale.

The Small Business Administration should always keep one thing in mind when looking at any matter relating to small business or so-called major business and that is the fact that this country needs both big and small business to produce the greatest number of goods possible, with the largest number of employees on the payroll as possible -- produced at the cheapest price possible for the benefit of the consumer.

We believe that most small businesses are very efficiently operated and do not need any special treatment by the government (tax payers) to run their business. If the SBA program is a subsidy to inefficiency (which we believe it is) should the tax payers continue to lose revenue from National Forest Products Sales? There is no way that inefficiency should be supported by any tax payer's money, regardless of the number of employees on the payroll. Regardless of size, the small and the large business is owned by a group of individual investors (with the only difference being a greater number in the so-called "major"), who are all, tax payers and common working people trying to make ends meet, in a country that seems to have forgotten that it is not a sin to make a profit or to work.

Listed below are examples of total sale programs for the Kisatchie National Forest from the years 1978 and 1979:

1978 Forest Service Sales (Louisiana)

Total Sales - 66,425,000 bd. ft. Scribner Scale

Purchased by SBA - 35,926,000 or 54% (included in this is 11,388,000 from major sales)

Purchased by majors - 30,499,000 or 46%

Average price for SBA sales- $ 183.31 (Scribner)

Average price for Majors - $ 212.37 (Scribner)

Price Difference - $ 29.06 (Scribner)

1979 Forest Service Sales (Louisiana)

Total Sales - 68,402,000 bd ft. Scribner Scale

Purchased by SBA - 38,964,000 or 56% (included in this is 16,410,000 from major sales)

Purchased by major - 29,438,000 or 43.1%

Average Price SBA - $ 240.01

Average Price Major - $ 262.37

Price Difference - $ 22.36

STATEMENT FOR HEARING OF
U. S. SENATE SMALL BUSINESS COMMITTEE

February 19, 1982
Hot Springs, Arkansas

by

GEORGIA-PACIFIC CORPORATION
CROSSETT, ARKANSAS

The Georgia-Pacific Corporation has its origin as a small lumber company founded in Augusta, Georgia in 1927. This was a "truly" small company with only a handful of employees. Even though competition in the wood products industry has been and is very tough, our company and other small companies survived and grew without the benefit of preferential treatment now granted by the Small Business Administration (SBA) program. Competition in the marketplace demanded that companies be productive, efficient, and wisely managed in order to survive.

Since passage of the original SBA legislation in 1954, the effect of the marketplace has been blunted and many companies, not necessarily small firms, are being handed substantial off-budget subsidies through SBA regulation of federal timber sales.

Although it has been popular to grant subsidies to various constituencies in the past several decades, our country is now reaping the punishing rewards of these federal government programs which compensate inefficiency, result in higher prices to consumers, and decrease competitiveness of United States products in domestic and world markets. Today, we all feel the effects of the poor economic situation partly created by federal programs which subsidize certain groups to the detriment of the Nation. It is time to correct past errors which created unneeded, counterproductive federal programs.

From our experience in purchasing federal timber, we have found that the SBA regulations result in set-aside sales of higher quality timber which are less costly to operate, on which only firms of less than 500 employees can bid. In addition, the set-aside sales usually sell at reduced prices. The SBA regulations thus result in subsidies to many firms including large, established companies having up to 500 employees.

High and speculative bidding usually occurs on the limited remaining federal timber on which firms of any size may bid.

One of the main distortions of the SBA program is caused by the definition of small business as "less than 500 employees." The arbitrary selection of the 500 employee limit results in a cradle-to-grave federal subsidy for many companies. It was never the intent of the SBA legislation to provide perpetual preferential treatment for larger, established firms.

The SBA program creates further inequity through its regulation of base-share allocation. The current SBA regulations result in continually increasing timber allocations to firms with 500 or less employees. The experiences of Georgia-Pacific and other firms of 500 and more employees, which point to obvious inequities in the SBA program, is confirmed by independent studies.

A report by the General Accounting Office (GAO) in 1979 found several key problems including:

- There is no record that SBA considered the factors required by its regulations in setting the timber industry size standard.

- Companies with fewer than 100 employees have benefited less from the set-aside program than have companies with more than 100 employees.

- The program tends to maintain a static allocation of timber between small and large firms.

- Set-aside timber sales have been of higher quality yet have returned less revenue to the U.S. Treasury than open sales.

An independent study contracted for by the U.S. Forest Service has recently been released and similarly points to major changes needed in the SBA program. An overview of this study is attached.

Both evidence and experience indicate that the SBA timber set aside program results in costly off-budget subsidization of numerous companies, many of which are not small by any stretch of the imagination. We are very hopeful the Senate Small Business Committee will undertake action to amend the SBA authorizing legislation, or cause the regulations to be revised. We will be happy to work with the Committee and provide recommendations for specific changes needed.

It is our understanding that small business firms in Arkansas have requested the opportunity to comment on the SBA regulation which requires that small business may not sell more than 30 percent of its preferential SBA timber to businesses not classified as small. This regulation which allows so-called small firms to sell 30 percent of its SBA timber to large firms has resulted in speculative bidding by small firms who resell the timber. Although it is sometimes advantageous for large firms to buy the 30 percent allowed from SBA sales, in order to reduce speculation and high prices Georgia-Pacific would support changing the SBA regulation to require 100 percent of set-aside timber to be sold to or manufactured by small business firms. This would not only reduce speculation, but would also provide more timber to small firms. This should, however, be only the initial step in the overdue and needed revision of the SBA program.

COMPETITION STUDY OVERVIEW

> This Study shows the SBA Timber Set-Aside Program reduces competition, reduces revenue to the U.S. Treasury, yet these restricted small business sales tend to be of superior quality than open sales, with lower logging costs and a higher selling value lumber/plywood end product.

1/ Page Reference

The recently published Competition Study, commissioned by the Forest Service, by the much respected University of California (Santa Barbara) Economist Professor Dr. Walter J. Mead, backs up what the Public Timber Purchasers Group has repeatedly stated...the Program is anti-competition, it does not enhance free competition or provide for full competition and is actually counter to maintaining and strengthening the overall economy of the Nation. The Program provides a subsidy, beyond the preference guarantee of quality and quantity, of a staggering nationwide dollar amount for "big-small" mill owners while penalizing other small businesses. The Public Timber Purchasers Group believes the present Set-Aside Program goes considerably beyond providing aid, assistance and protection for the "big-small" mill owners.

Mead concludes that, generally, the market for National Forest timber is ii
competitive, there is no control of stumpage prices by private owners, 28.30
but that an important factor found restricting competition for National ii, viii
Forest timber is the barrier imposed by the Small Business Administration, 79.249
(SBA) under the Small Business Timber Set-Aside Program administered by
the Forest Service with the necessity of SBA concurrence on all Program
details.

The Study suggests that competitive performance could be improved by repeal
of the legislation that established the SBA Set-Aside Program (the present ix
Program, evolved from an earlier program, was administratively established 247-249
by a now 10 year old Interagency Agreement between the SBA and the Department of Agriculture, representing the Forest Service, from the Small Business Act language (15 U.S.C. 631) to achieve full and free competition, to strengthen the overall economy of the Nation, to provide aid, assistance and protection to insure small business a fair proportion of Government property).

The Public Timber Purchasers Group, comprised of the major size forest products industry companies, does not ask for repeal of the Small Business Act nor elimination of some type of timber set-aside program, as needed, to provide reasonable aid, assistance and protection for small business. The Public Timber Purchasers Group does ask for administrative change and modification to the Agreement (and the present Program, detailed in the Forest Service Manual Section 2431.11 through 2431.19, FSM 2/81 AMEND 123, and the Section 2438 concerning the Special Salvage Timber Sale Program) to eliminate the flagrant inequities of the present Program.

1/ "The Effectiveness of Competition and Appraisals in the Auction Markets for National Forest Timber in the Pacific Northwest" by Walter J. Mead, Mark Schneipp and Richard B. Watson, September 30. 1981, USFS Contract No. 53-3187-1-43 and PSWG-34.

In the Competition Study a direct revenue loss to the Federal Government
(and to the Counties) was found to be associated with the set-aside sales
during the period 1973-1979 which, when expressed in 1981 dollars, amounts vi
to $108 million dollars, just from the National Forests in the Pacific 248
Northwest. Set-aside sales were found to have had a large and negative impact
on overbids relative to open sales of comparable quality and size.
The Public Timber Purchasers Group has long contended that set-aside sales,
not taking into account their higher quality, sell at a reduced price providing
a dollar subsidy coupled with the quality-quantity preference guarantee.

The Study finds the SBA Set-Aside Program to be a factor reducing competition v
for those sales selected as set-asides and causing a substantial reduction vii
in bids for those set-aside sales overall, resulting in substantial reductions 170
in revenues to the Federal Treasury and in turn County Government.

Set-aside sales in comparison to open sales have the desireable characteristics
of large volume, greater contract length, lower logging costs and vi
a higher end product lumber and plywood selling price because of the higher
quality timber.

The Study indicates that the structure of the market has not changed in ii
the last 13 years and that there does not appear to be any serious problem 75
with respect to potential or real collusion. There do not appear to be 77-79
any significant barriers to entry, i.e., to new firms entering the industry, 91
except for the SBA Set-Aside Program (and the log export restriction).

Although end-product industries show an increased concentration over the
past decade, there has not been a similar trend with respect to concentration i
in the buyer market for Forest Service stumpage over the last 16 years. 32
Concentration rations with respect to lumber and plywood output for the
Pacific Northwest show very nominal change.

While the Study does not address the timber industry size standard (PTPG
believes there is solid economic evidence that 500 employees is considerably vi, vii
higher than it should be) the Study does indicate that the decline 244
that has occurred in sawmills, i.e., at an attrition rate of less than 248
5%, has been primarily in the smaller size operations, the smaller mills
that account for a small amount of the timber processed.

The General Accounting Office Report CED-79-8 April 5, 1979 clearly stated
that the companies at the lower end of the size standard, under 100 employees,
benefited considerably less from the present set-aside program
than the program dominating "big-small" companies much closer to the
500-employee limit.

The Study implies that the Forest Service could achieve a more optimum resource
allocation and thus make more timber available and thereby pursue 14
the goal of a more secure timber supply, i.e. the Forest Service could 15
produce more timber through better management.

The Study also discusses the road option election for firms qualifying as
small companies which was legislatively established by the 1976 National
Forest Products Management Act.

The Study found that Forest Service appraisals substantially underestimate v
the cost of building permanent roads, i.e., spec roads. Thus the high bid vii
on National Forest timber sales, since it does not account for the full road 153
cost, substantially understates the actual payment for stumpage when the 154
purchaser builds the road. When small business opts to have the Forest 170

Service build the road, this additional unmeasured revenue loss to the Federal Government is incurred. This is an additional dollar subsidy for small business.

The SBA road option alternative has caused the presence of large road
costs to have a large and positive impact on overbids by small firms.
They are able to shift this cost to the Forest Service and eliminate any
competitive advantage of large firms with efficient road-building capacity. vii
Large firms are now generally at a disadvantage because of their ineligi- 153
bility to participate in the option election. Since the advent of the 154
road option program, road costs should pose no barrier of any kind to
small business firms. It appears, from the report, that road costs on
the average exceed purchaser road credits by 29%. It is readily apparent
that, as a result of this deficiency in the Forest Service appraisal
system, an additional and substantial contraint on competition has been
established by the Federal Government.

The Study concluded that the desired large sale Volume size and long
contract length had a significant effect on competition, particularly
the area west of the Cascade Mountains in the Pacific Northwest between
1973 and 1979. This observation must be emphasized and is particularly 237
significant in perceiving the actual impact of the SBA Set-Aside Program 248
on revenue when one realize that the analysis showed set-aside sales
were of larger volume size and longer contract length, compared to open
sales, yet in spite of this advantage, the evidence indicates that set-
aside sales sold for lower prices than the lower quality open sales,
contrary to the normal result that would be expected in the absence
of this constraint on competition with sales larger and longer. The
Study shows, set-aside sales along with having relatively large volume
and greater contract length than open sales, also tend to have lower
logging costs which imply less sophisticated logging methods for easier
timber access. The dollar subsidy is actually increased because set-aside
sales tend to have higher manufacturing costs, implying a higher end
product selling value indicative of a higher grade lumber and plywood
and larger proportions of the more desired species, Douglas Fir west of
the Cascade Mountains and Ponderosa Pine east of the Cascade Mountains.

An analysis of the Mead Competition Study, coupled with the earlier General Accounting Office Report, conclusively indicates the real necessity of reasonable change and modification to the present Set-Aside Program.

A 31-page detailed and exhaustive (page referenced to the Mead Study) Review of the Competition Study, prepared by Forest Economist Wesley Rickard, is available through the Public Timber Purchasers Group Office. 714 Oregon Bank Building, 319 SW. Washington Street, Portland, Oregon 97204 - telephone 503/223-8827.

The complete Study, "The Effectiveness of Competition and Appraisals in the Auction Markets for National Forest Timber in the Pacific Northwest" by Walter J. Mead, Mark Schneipp and Richard B. Watson, September 30, 1981, USFS Contract No. 53-3187-1-43 and PSWG-34 is available from the Timber Management Office, United States Forest Service, Washington, D.C..

A "Executive Summary" prepared by the authors, i through xiii, preceded the 328-page full study, and is available from the Public Timber Purchasers Group Office.

Senator **Bumpers**. We're pleased to have you, Mr. Gram. Thank you very much for coming. Let me just ask you this, Mr. Gram. You've touched on something. I might say before getting to that, it seems that everybody is for the set-aside program at some level, but nobody seems to like the way it is sponsored. At least the way it's being administered. What would you think about a system under which, in order for a small to be an eligible certified bidder, that they have to be certified. For example, in order to be civil service employee, you've got to get on the register before you're eligible for employment. What would you think about just saying that anybody who considers themself a small operator, and wants to be able to bid on timber in the national forest under the small business set-aside program, send in an application, let the forest supervisor or SBA or somebody check out the—your mill, how much timber you're processing at that time, what your capacity is, how much you sold the preceding 2 or 3 years, and so on, and get on an eligible bidder's list? If you want to—let me just leave the question at that. What would you think about that?

Mr. **Gram**. You're speaking on an eligible bidder's list as far as set-aside sales go?

Senator **Bumpers**. Yes.

Mr. **Gram**. Because I think in the American system of free competitive enterprise, especially on an open sale, any one should——

Senator **Bumpers**. Right.

Mr. **Gram** [continuing]. That is a reasonable business person should have the right to——

Senator **Bumpers**. The question only goes to the set-aside.

Mr. **Gram**. Well, I think I would agree with Mr. Kernan. Basically, I trust the honesty of the American businessmen, small and large; and if he self-certifies, he's got to sign that bidding form, and if he self-certifies himself that he is small, that that is a pretty good indication that he should be small, and from what I understand——

Senator **Bumpers**. You recall the testimony this morning that that ain't necessarily so.

Mr. **Gram**. There certainly can be an exception to that. I think, from what I understand of the SBA's policies, this 5 days of being able to challenge and dig into the exact size status. I understand what you're saying. There is some logical thrust to it. A heck of a lot of paperwork would be involved.

Senator **Bumpers**. Mr. Teague, let me ask you this. Does Bibler own any of its own land?

Mr. **Teague**. Yes. Yes, we do.

Senator **Bumpers**. How much land do you own?

Mr. **Teague**. About 27,000 acres.

Senator **Bumpers**. Where is most of it?

Mr. **Teague**. It's north of Russellville, and it would contribute—right now it contributes about 5 percent of our needs, and would not be able to contribute more than 12 to 15 percent of our needs at any time.

Senator **Bumpers**. So, you say somewhere between 90 and 95 percent depend on the forest. Is that correct?

Mr. **Teague**. And purchases from private landowners.

Senator **Bumpers**. What percentage of your needs last year was supplied by the national forest?

Mr. Teague. About 55 percent.

Senator Bumpers. How about you, Mr. Dellinger?

Mr. Dellinger. Very little by direct log supply, but probably less than 15 percent came from the Forest Service. Indirectly through purchases of chips from saw mills, then a larger quantity. But there is no way for us to measure that amount.

Senator Bumpers. Well, is Arkansas Kraft not fed directly on these sales?

Mr. Teague. Yes, sir.

Senator Bumpers. You do?

Mr. Teague. Yes, sir. But we don't get very many.

Senator Bumpers. Why do you not? Just give me your own thoughts about that.

Mr. Teague. Well, primarily because there's so few that we have an opportunity to bid on. The competition is exaggerated.

Senator Bumpers. On the ones you do get to bid on.

Mr. Teague. Right, and we just come up second an awful lot, and you don't get any awards for being second.

Mr. Gram. Here again, when you have what I consider an artificially high small base share on both markets, you've got a smaller piece of pie for peoples that really have a capacity that need more than that. On the other side of the coin, you have a larger piece of pie, which isn't all needed. It just creates—when the open sales are open, it creates a very tough bidding situation for the large business community.

Senator Bumpers. Let me ask you this. If it was the consensus of the small operators, that if they could get that 30-percent sale provision removed, they might in exchange for that agree to less than whatever the set-aside—the total set-aside is, if they were sure that that was all going to be available to them and the legitimate operators and not the speculators; which would give you a little more timber to bid on also; would you consider this a possible solution of this problem?

Mr. Teague. Well——

Senator Bumpers. Did I not make the question clear, Mr. Teague?

Mr. Teague. No, sir, I missed your point.

Senator Bumpers. Well, right now, for example, on the Ouachita, 60 percent of the timber has to be set-aside for small operators, and of that, they are limited in selling to the large firms, 30 percent of that. Now, they obviously object strenuously to—all the small operators who testified this morning have objected strenuously to that 30-percent rule. They say that it's violated all the time, and as long as there is any limit, it's going to be violated. If there were no 30-percent permissible of sales to large, then any sale to a large would be, you know, very visible. My question is, If the small operators got together and said, "Well, we'd be willing to take less than 60 percent as our share, if you will take that 30-percent sale rule out, so that, for example, we're going to get 50 percent of the timber. We know it's going to go to us and not brokers and speculators. That will satisfy our needs and competition won't be quite so keen, and we can buy this timber at a price that we can afford to mill it and make a profit on." What would be your thought on that?

Mr. Teague. I'd be in agreement with it. If he wants to—I'm in agreement with the—of the requirement of smalls to manufactured 100 percent of his purchases.

Senator **Bumpers.** Do you buy subcontracts from some of the smalls?

Mr. **Teague.** [Negative nod.]

Senator **Bumpers.** You do not?

Mr. **Teague.** On occasion, I—on occasion I have.

Senator **Bumpers.** But it's not a prevailing practice in your firm?

Mr. **Teague.** No, not at all.

Senator **Bumpers.** How about you, Mr. Dellinger?

Mr. **Dellinger.** Senator, to my knowledge, we have not participated in that 30 percent. Possibly an independent logger contractor has brought in a load of those logs into one of our installations, but we've never gone out and solicited that 30 percent.

Sentor **Bumpers.** You've never said, "Look, I'd like to buy some of this timber that's out there in the forest that you have a contract for," you don't do that?

Mr. **Dellinger.** Yes, sir. Now, we've gone out and bought portions of sales from them; but usually it would be a unit that may have, say, 1,000 cords of pulpwood and maybe 2,000 cord feet of saw timber. We would buy the whole sale and have our own logging contractor cut it.

Senator **Bumpers.** The sales don't differentiate? Let me ask you this question. I probably should have asked this of George earlier. But when the Forest Service puts up a tract for bid, do they say that this is 1 million board feet and so many hundred cords of pulpwood in this tract?

Mr. **Dellinger.** Yes, sir. They don't use cords. They use hundred cubic feet for the small round wood.

Senator **Bumpers.** But they do differentiate between the large and the small?

Mr. **Dellinger.** Right.

Senator **Bumpers.** And are you required to bid separately? I know there is one total bid. But do you itemize those two on your bid? How much you're bidding on the saw timber and how much you're bidding on the small round?

Mr. **Dellinger.** We do. Now, I don't know if that's a requirement or not. At one time, we bid in a lump sum figure on one of the forests, but——

Senator **Bumpers.** Is that broken down now, George?

Mr. **Leonard.** Ordinarily it is broken down, Mr. Chairman, because during the life of the sale, there may be some adjustments.

Mr. **Dellinger.** We have no objection to integrated sales when there are two products on the same piece of ground. Our problem comes from when there is one sum and we have five different units on it, and two or more of those units would have very little saw timber on it. And in this set-aside, the small businessman has no use for that pulpwood. for he in turn sells it. And more often than not, he sells it at a profit. I don't object to that either, because it's just the American way.

Senator **Bumpers.** Mr. Teague, you've made a statement about there not being any smalls much in the Ozarks. I understood you first to say that there were none. I obviously misunderstood you.

Mr. **Teague.** There are no small primary pine users in the main block of the Ozark National Forest. There aer no small manufacturers of pine saw timber on the main block. The main block would differentiate between a very small district, the Seminole district, which you might be familiar with. Now, there are smalls—there're legitimate small pine manufacturers in that area. And of course, the St. Francis being a separate forest, it's got smalls in it too. But in the main block, the block that lies just north of Russellville, there are no small pine——

Senator **Bumpers.** You have raised, what I think, is a pretty legitimate issue. That's the reason that every hard and fast rule ought to get you in trouble, because forests differ. You have a lot of smalls in the Ouachita and you obviously don't have any—maybe one pine manufacturer in the Ozark. And that presents a problem, where if you're setting aside 60 percent of the Ozark and there is nobody there to bid on it, you're obviously at a disadvantage, because you're not even allowed to bid. What's been happening up there?

Mr. **Teague.** Well, we've been buying a large portion of it, along with some other larges.

Senator **Bumpers.** Let me ask you this: If there is a bid put out and there is no small set-aside bid put up and there is no small, are you entitled to bid on it?

Mr. **Teague.** Yes, sir. We can buy if there is no small bidders on the sale.

Senator **Bumpers.** And that is credited then against the small business. In other words, that's credited against the set-aside, is it not?

Mr. **Teague.** Right. That will not be used in his computation for his portion of the base share at the end of the 5-year period. There are smalls that we—in the Ozark. I mean in the Ouachita market area that will come, because the price of some of the set-aside sales in the Ozark are attractive, and will come out of one market area, which would be the Ouachita, and into the Ozark market area and purchase the sale. Which we feel like this violates the spirit of the program, if not the letter of the law.

Mr. **Gram.** Could I point out in this particular situation that the large business community has to go to the expense of looking at the sale, making an evaluation, putting the bid forms together, and all of that expense, and put in a bid with just the possibility that there might not be a bid from the small business community. So, that's an uneconomic process.

Mr. **Teague.** I'd like to make one other point. It always invites—that timber that's out there always invites—could invite an irresponsible small, someone who would come in and simply purchase it. About 3 years ago we had a small that came in that was in no way—with all that timber available to a small, it's very easy for a speculator to come into our area and set up a shop and purchase it, and put us in a real bad position along with the other larges in the area. About 3 years ago, that very thing happened. A small came in, totally—it was not knowledgeable in the wood using industry, and I don't think at any point in time that his program was ever even considered viable. But he did buy two set-aside sales. He did not perform on either one of them, and I bought one of them with a waiver from the SBA in Atlanta, who allowed me to buy the sale. And I paid him a profit for the sale. The timber was needed by us, and I assume it was needed by the other larges in the area. The Forest Service had—he had built a road and had not paid his logging road contractors. So, the Forest Service and the road contractor and the small and the large finally resolved it, but it was really a hassle to—and that's always a possibility.

Senator **Bumpers**. I understand what you're talking about. I might just say, Senator Pryor alluded to Representative Maddox's presence here. The first year I went to the Senate, Odem came to me. He's a school superintendent, so he has a deep and abiding interest in the revenues that come to the school districts from the sale of timber off the national forests. And it's just one of those things. People often wonder, does anybody listen or can somebody make a suggestion and get it converted into a law in Washington. Well, Odem did, because he told me at that time that the Forest Service, when they put a road in a bid, you bid the road plus so many dollars. And the school districts weren't getting their 25-percent turnback on the value of the road. Sometimes the cost of the road was almost equal to the value of the timber. So, the timber was being sold and the school district was getting virtually nothing. To make a long story short, I got that law changed, and that has been a real godsend to the school districts within the national forests. Odem, how much was it in Mena? The Mena school district alone, I think that's $68,000 additional by the first year. So, that's been a welcome change.

Gentlemen, do you have anything else that you want to add? Mr. Gram?

Mr. **Gram**. I'd just like to compliment you on obviously doing homework before this hearing, and that you've got a reasonable grasp of the thing. And also that you've conducted, I think from everyone's standpoint, a very fine hearing. And it was a pleasure on my part to be able to participate. But I wanted to especially compliment you on the homework that you've obviously done.

Senator **Bumpers**. Thank you very much, Mr. Gram. Mr.Dellinger and Mr. Teague, thank you very much. As I said at the opening of the hearing, we have had some people call the office and within the timeframe here, I'd like if I could to limit it to 2 minutes, to these people who have called in. John Moore? Is John here? John, come on up. O. J. Tubbs? Is Mr. Tubbs here? Albert Wright, is he here? John, go ahead. I could tell that you were really antsie to say something back there a while ago. So, I'm glad you're one of our spokesmen.

STATEMENT OF JOHN MOORE, MOUNT IDA, ARK.

Mr. **Moore**. I'm John Moore, and I live in Mount Ida, Ark., in Montgomery County. And I know these guys up here a while ago made some good talks. And they probably covered it better than what I can. But I've heard now about small business qualifications for 100 and even 25. Now, what do you do in the case of three. I mean, that's what we have. There's no chance for us to even bid on one of them sales, because of the road work and water and seeding, it would exceed more than double than what we could even get for it after it was marketed.

Senator **Bumpers**. Who all is in your firm? Is it a family thing? You and a brother or father or something?

Mr. **Moore**. Just me in the pulpwood. Now, my father-in-law is the sawmill. That's Mr. Tubbs. But just me now. I did have two employees, but had to lay both of them off because we couldn't get timber. Of course, since the mills went down and everything, they're buying chips. They're running the chippers, and big mills and stuff are buying the chips. Why should they buy pulpwood from us? I mean, they cut us all back to—we're just barely existing.

Senator **Bumpers**. John, do you ever buy from private owners? Just pulpwood off private land?

Mr. **Moore**. Yes, sir. That's the only way I can stay in business.

Senator **Bumpers**. I was going to say, you fair a lot better that way than you do trying to bid on national forest timber.

Mr. **Moore**. Oh, yeah.

Senator **Bumpers**. Well, let me ask you a second question. Do you get some pulpwood from people like Dale Rodgers. He's interested in the saw logs and not so much in the pulp. Do you contract with some of those people who get bids on national forests for the pulpwood?

Mr. **Moore**. I have twice, but usually you have to pay a profit. I mean, you know, they have to pay a profit off of it, and usually you have to—like if they bought it for $3,000, you know, what they bid on it, well we'd wind up paying $5,000. But I've got some suggestions on how we could get timber, if they would only listen.

Now, I've come down here and we've picketed the U.S. Forest Service, and you know that I've sent you letters and Mr. Pryor, David. And also Congressman Hammerschmidt. But you know, a couple of years ago, I tried to buy timber when they were slashing a lot, and it was merchantable timber. We tried to buy timber as far in advance as a year before they went in there and slashed timber down and rolled it and burned it. Now, I heard you telling Mr. Maddox here, he brought up that road work. I just wonder how much revenue the school districts and stuff is getting off the timber that is burned. Or is there any way that they can tell how much timber is destroyed each year. I know the year before last, there was 20,000 acres sold, burned or injected or slashed in the Ouachita National Forest. Last year there was 22,000. It jumps about 2,000 a year.

If you took one-third of that, say seven cords per acre, there's $50,000. I mean, that's not very much, you know. It's a lot to me, but it's not much to big business. But even 25 percent of that to the school, that's a lot. We're talking about several thousand dollars that the county is getting beat out of with just the Forest Service going in there and injecting timber. Now, we could buy this timber, but they've planned—they're supposed to plan a lot of this way ahead in advance, but they just don't want to sell it, it seems to me. I mean, I found this to be true. And to me, the timber in this country is just about cut out. I mean, as far as big timber. We've got to compete with Weyerhauser and International Paper and everybody else, you know, on timber sales. Like I say, there is no way to we could buy even if it was brought down to say $25,000 set-aside sale. The road—we couldn't even afford to buy that and come out with a profit.

The only chance we have is ranger sales or something that somebody else can't bid on. I thought the bidding was, you know, pretty fair. But when you've got guys out here that can get so much for it just buying it and reselling it and not even touching it, I mean, that don't seem fair to me. If these policies are not changed—there are several of them, you know. Why does the Forest Service go out here and inject timber when it could be sold, because they've already closed the unit out and they've seeded it. Some of the bigger companies have already seeded it. So, they don't want to reopen it and have to tear down them water bars and have to redo the work. But there is a lot of timber destroyed like that every year. I'm just kind of curious to know why couldn't we get timber. We're not asking for it to be given to us. I mean, I want to pay what's right.

But it's just like this letter right here (indicating). Everybody in here probably knows what this is. It's a bid form. It says, "U.S. Department of Agriculture, U.S. Forest Service." And it says right across there, "An Equal Opportunity Employer." Well, to me that's a crock. That's just—that's what I feel about it, because there is nothing equal about it. And until we do—I mean, if people don't start listening to us—I mean, there's people going out of business. Most of them people up there are poor. I've got probably 25 workers and there is not five of them at one time working all time. It don't seem like the Government wants to even go out and market any timber, but they'd rather see them on food stamps. And I guess that concludes what I've got to say. I guess I get a little burned up, but that's what's going on. We don't even have a chance to get any timber.

Senator **Bumpers**. You're the smallest of the small, aren't you, John?

Mr. **Moore**. That's right. We're small. I'm talking about producers—you know, I've got people—even if I bought one of them with 25 percent down payment—at a small business sale you can pay 25 percent down to a unit, for me to get my money back in a hurry, I would have to—if it was a five unit sale, I'd have to open them all at one time and put five people in there to even get it out on time. Well, there's no way that I can do that. And the banks in our county won't even loan money. You've got to have a timber deed to get the money. So, what good is it. I walked in there—I operate on $5,000 a week. If I walked in there and asked for $100,000, I know what they'd tell me.

Senator **Bumpers**. I know what they'd tell you the interest rate was.

Mr. **Moore**. Yeah. They wouldn't mind doing that.

Senator **Bumpers**. John, thank you very much for coming.

Mr. **Moore**. Thank you.

Senator **Bumpers**. John Ed Anthony, welcome, and we're glad to have you.

STATEMENT OF JOHN ED ANTHONY, PRESIDENT, ANTHONY TIMBERLANDS, INC., BEARDEN, ARK.

Mr. **Anthony**. Thank you. I have some prepared remarks that I would like to submit for the record. It will be difficult to synopsize 2 days of preparation into 2 minutes, but I'll do my best. We beat around on the 30/7 thing, I guess, adequately. And I think that's been well covered. But the second subject of the hearing, I understand, size limitation I don't believe has been discussed very much.

I testified in Atlanta a year or two ago and had included that testimony in my prepared remarks, but at that hearing, my testimony encouraged the increased in size limitation from 500 to 1,000. Our company has slightly over 400 employees, and occasionally in the past, we have exceeded the 500 limit by 30 or 40. Our major competitors in Arkansas are Weyerhauser, GP International and Potlatch. Three of these have employee levels in 1978 of over 40,000, and sales of about $4 billion each. To find our company grouped with these corporations is, I kind of think, outside the intent of the limitation.

To expand upon that for just a second, let me call your attention to the difficulty of competing with these giants while remaining very small. In our company, we group together three mills, all of which at one time were independent. There is some strength in numbers, and we have achieved some efficiencies, and to this date are surviving. But we're the exception rather than the rule.

The larger problem is not that we have too many employees in our plants, but that we're required as a practical matter to carry many people on our payrolls who are not true employees. So many of our logging contractors and suppliers are very small producers, having only three or five or ten people working in their crews. These people find it very difficult to abide by the maze of Federal and State regulations involving minimum wages, safety requirements, workmen's comp., tax withholding, and so forth. In order to insure that these people, our suppliers, are abiding by the law, we bring them under our umbrella of supervision. We provide their workmen's comp. and their group insurance and take care of some of their bookkeeping for them.

In doing this, of course, in the eyes of the law and the SBA, they become our employees, although they are as independent as the razorback hog in the Ouachita River Bottom, and just about as hard to get along with. Of our current employee level, as many as 150 of these would be employees of this type.

One of the primary problems of the U.S. Forest Service sales is that the rules are written to serve both the South and the West, two very different regions and two very different types of forests. You've pointed this out several times today in just discussing the difference between the Ozark and Ouachita Forest.

I think it would be very progressive if rules could be adopted that would separate the Eastern forest from the Western forest. We tried this as an industry several times, but invariably the East and the South and the West began squabbling among themselves and were unable to come up with any kind of consensus to recommend to the Forest Service; and therefore, nothing happens in Washington.

But on my final point, I've expressed this to you before that the biggest problem—the biggest point I would like to make is that all small businesses, which I assume the SBA is intent upon trying to help all small business survive, all small business in the lumber industry are not in the national forests. And U.S. Forest Service's practices deviate so radically from the practices that are found outside the national forest so as to create an inequity between smalls that in many cases it's almost insurmountable. This goes back to the idea about the Western and Southern forest. In the West, most timber is found in the national forest, but certainly not so in the South. Almost all timber sold in the South from private lands have the contract term of only 1 or 2 years. More importantly it requires that the bulk of the cost of the timber be paid in advance. Seventy-five to 90 percent of the cost of timber by a small company outside the national forest must be paid in cash at the time the sale is purchased.

The U.S. Forest Service's practice is to make sales for significantly longer periods of time and to require, as you know, only a token amount of money be paid down, and that no additional payment be made until a compartment is opened. What this does is provide an enormous subsidy to mills who buy a large portion of their timber in the national forest. And just as an example, our Bearden plant is only 75 miles south of here, and has an annual need of about 25 million board feet of timber. If we're required to buy that timber in the open market as we are and pay 75 percent of that requirement down in cash, we have an outlay of $5.6 million tied up in timber. Debt service on that figure alone at today's prime rate comes to $956,000.

A similar company operating in the national forest, both companies small companies, would have only $280,000 invested in their 1-year supply. And therefore, they're likely to have several years supply tied up. This encourages speculation for mills are currently buying timber for conversion years in the future without having to make any significant cash commitment.

A number of points have recently been proposed by the Forest Service to improve the situation. I am familiar with those points and have reviewed them carefully. Those improvements, however, in my opinion, are so bland and so inoffensive that I do not believe that they will accomplish the desire goals.

And finally, as we were talking today, I was thinking, this is the only Government agency I know of, the Forest Service and SBA, that deals in self-certification. I've never had the IRS or OSHA or the FTC or the ICC ask me if we would certify our return and that would be the end of it. Thank you, Senator.

[The prepared statement of Mr. Anthony follows:]

REMARKS TO SBA HEARING 2-19-82

MY NAME IS JOHN E. ANTHONY AND I AM PRESIDENT OF ANTHONY TIMBERLANDS, INC. WITH HOME OFFICE, IN BEARDEN, ARKANSAS. OUR COMPANY IS PRIVATELY-OWNED AND OPERATES MILLS IN BEARDEN, MALVERN AND BEIRNE, ARKANSAS. ONE OF OUR MILLS, THE MALVERN PLANT, PURCHASES TIMBER FROM THE OUACHITA NATIONAL FOREST ON OCCASION.

THESE OCCASIONS ARE RARE NOWADAYS BECAUSE IN RECENT YEARS WE HAVE BEEN UNABLE TO COMPETE FOR STUMPAGE AS A RESULT OF WHAT CAN ONLY BE TERMED WILD SPECULATION. WE CLOSED OUR PLANT IN BENTON FOR THIS REASON. I WAS DISAPPOINTED WHEN THE FOREST SERVICE REWARDED THOSE SPECULATORS BY EXTENDING THEIR CONTRACTS.

HOWEVER, I BELIEVE TODAY WE ARE ADDRESSING TWO DIFFERENT ISSUES, THE FIRST BEING THE 70/30 RULE AND THE OTHER BEING THE SIZE LIMITATION OF 500 EMPLOYEES FOR SMALL BUSINESS CLASSIFICATION.

I'LL BE BRIEF. THE 70/30 RULE AS A CONCEPT HAS SOME MERIT. HOWEVER, I BELIEVE THE RULE IS BEING WIDELY ABUSED. TO MY KNOWLEDGE THERE IS NO ENFORCEMENT OF THE 30% OUTSIDE SALE LIMIT, NO AUDIT, NO PENALTY, NO REASON FOR AN UNSCRUPULOUS PURCHASER TO DO ANYTHING OTHER THAN TO SELL IT ALL OUTSIDE. UNDER THOSE CONDITIONS IT WOULD MAKE NO DIFFERENCE IF THE RULE WERE 10/90 OR 50/50 BECAUSE WITHOUT STRICT POLICING NONE OF THESE CONCEPTS WILL WORK. MY PERSONAL FEELING IS THAT SMALL BUSINESS PURCHASES SHOULD BE UTILIZED IN THEIR ENTIRETY BY THE PURCHASER IN THEIR OWN PLANTS. OTHERWISE THERE IS NO JUSTIFICATION FOR SMALL BUSINESS SET ASIDES. THE EXCEPTION TO THIS, OF COURSE, WOULD BE

THE SPECIALTY PRODUCTS INCLUDED IN A SALE WHICH IS NOT CONVERTIBLE IN A SMALL BUSINESS PLANT. MY ADVICE ON THE SUBJECT WOULD BE TO REQUIRE SMALL BUSINESSES THAT BUY THE PRINCIPAL PRODUCT OF ANY SALE BE REQUIRED TO CONVERT THAT PRINCIPAL PRODUCT IN THEIR OWN PLANT AND FOR THE FOREST SERVICE TO ADOPT LANGUAGE ALLOWING THE OUTSIDE SALE OF RECOGNIZED SPECIALTY PRODUCTS (POLES, PULPWWOD, VENEER LOGS).

ON THE SECOND SUBJECT, SIZE LIMITATIONS, I HAVE TESTIFIED EARLIER AT A SMALL BUSINESS HEARING IN ATLANTA AND ATTACH A COPY OF THAT TESTIMONY ENCOURAGING THE INCREASE IN SIZE LIMITATION FROM 500 to 1000. WE NOW HAVE 403 EMPLOYEES. ON OCCASION IN THE PAST WE EXCEEDED THE 500 EMPLOYEE LIMITATION, THEREBY BECOMING INELIGIBLE FOR SMALL BUSINESS SALES.

OUR MAJOR CONPETITORS IN ARKANSAS ARE WEYERHAEUSER, GEORGIA-PACIFIC, INTERNATIONAL PAPER COMPANY AND POTLATCH. THREE OF THESE HAD EMPLOYEES LEVELS IN 1978 OR OVER 40,000 AND SALES OF ABOUT 4 BILLION DOLLARS EACH. TO FIND ANTHONY TIMBERLANDS, INC GROUPED WITH THESE GIANT MULTI-NATIONAL CORPORATIONS IS, I WOULD THINK, OUTSIDE THE INTENT OF THE LIMITATION. TO EXPAND UPON THAT POINT FOR ONLY AN INSTANT LET ME CALL TO YOUR ATTENTION THE DIFFICULTY OF COMPETING WITH THESE GIANTS WHILE REMAINING VERY SMALL. IN OUR COMPANY WE HAVE GROUPED TOGETHER THREE MILLS, ALL OF WHICH AT ONE TIME WERE INDEPENDENT. THERE IS SOME STRENGTH IN NUMBERS AND WE HAVE ACHIEVED SOME EFFICIENCIES THAT HAVE ALLOWED US TO REMAIN COMPETITIVE AND TO THIS DATE A SURVIVOR IN THIS INDUSTRY. WE ARE THE EXCEPTION RATHER THAN

THE RULE, HOWEVER. BUT THE LARGER PROBLEM IS NOT THAT WE HAVE TOO MANY EMPLOYEES IN OUR PLANTS, BUT THAT WE ARE REQUIRED, AS A PRACTICAL MATTER, TO CARRY MANY PEOPLE ON OUR PAYROLLS WHO ARE NOT TRUE EMPLOYEES. SO MANY OF OUR LOGGING CONTRACTORS AND SUPPLIERS ARE VERY SMALL PRODUCERS HAVING ONLY THREE, FIVE OR TEN PEOPLE WORKING IN THEIR CREWS. THESE PEOPLE FIND IT VERY DIFFICULT TO ABIDE BY THE MAZE OF FEDERAL AND STATE REGULATIONS INVOLVING MINIMUM WAGES, SAFETY REQUIREMENTS, WORKMEN'S COMPENSATION, TAX WITHHOLDING, ETC AND IN ORDER TO INSURE THAT THESE SUPPLIERS ARE ABIDING BY THE LAW WE BRING THEM UNDER OUR UMBRELLA OF SUPERVISION; PROVIDING THEIR WORKER'S COMP, THEIR GROUP INSURANCE AND A VARIETY OF OTHER SERVICES WHICH THEY ARE UNABLE TO PROVIDE FOR THEMSELVES. IN DOING THIS, OF COURSE, IN THE EYES OF THE LAW (AND THE SBA) THEY BECOME OUR EMPLOYEES ALTHOUGH THEY ARE ABOUT AS INDEPENDENT AS A RAZORBACK HOG IN THE OUACHITA RIVER BOTTOM AND JUST ABOUT AS HARD TO GET ALONG WITH. OF OUR CURRENT EMPLOYEE LEVEL of 403, ABOUT 150 ARE EMPLOYEES OF THIS TYPE.

THE SECOND POINT IS THAT SOME COMPANIES, OURS INCLUDED, IS INVOLVED IN ACTIVITIES OTHER THAN SIMPLE LUMBER MANUFACTURE. AS AN EXAMPLE, WE MAKE WOOD PALLETS OUT OF SOME OF OUR HARDWOOD PRODUCTS. THIS PALLET BUSINESS IS GENERALLY OUTSIDE A LUMBER MANUFACTURING OPERATION BUT BECAUSE IT IS UNDER OUR UMBRELLA THESE EMPLOYEES TOO ARE ADDED TO OUR MILL HANDS. IN GENERAL THE 500 LIMIT IS TOO RESTRICTIVE IN THIS DAY OF MODERN, EXPENSIVE PLANTS AND I STRONGLY URGE AN INCREASE IN THAT NUMBER.

AND FINALLY I CAN'T AVOID TAKING ADVANTAGE OF THIS AUDIENCE TO MAKE ANOTHER POINT. ONE OF THE PROBLEMS WITH USFS SALES GENERAL-

LY IS THAT THE RULES ARE WRITTEN TO SERVE BOTH THE SOUTH AND THE WEST; TWO VERY DIFFERENT REGIONS AND TWO VERY DIFFERENT TYPES OF FOREST. I WOULD URGE THAT SEPARATE RULES BE ADOPTED. ANYTIME WE TRY TO DEVELOP A CONSENSUS FOR RECOMMENDATION ON NATIONAL FOREST PROCEDURES THE SOUTH AND THE WEST RUN INTO EACH OTHER, CANNOT AGREE, AND THEREFORE A CONSENSUS IN WASHINGTON IS DIFFICULT TO OBTAIN.

BUT MY PET PEEVE, WHICH I'VE EXPRESSED TO BOTH SENATOR BUMPERS AND PRYOR, WITH REGARD TO USFS PRACTICES IS THAT THEIR PRACTICES DEVIATE SO RADICALLY FROM THOSE FOUND OUTSIDE THE NATIONAL FORESTS. ALMOST ALL TIMBER SOLD IN THE SOUTH FROM PRIVATE LANDS HAS A CONTRACT TERM OF ONLY 1 TO 2 YEARS. MORE IMPORTANTLY IT REQUIRES THAT THE BULK OF THE COST OF THE TIMBER BE PAID IN ADVANCE (70-90%). THE USFS PRACTICE IS TO MAKE SALES FOR SIGNIFICANTLY LONGER PERIODS OF TIME, TO REQUIRE ONLY A TOKEN AMOUNT OF MONEY BE PAID DOWN (1-5%) AND THAT NO PAYMENT BE MADE UNTIL A COMPARTMENT IS OPENED. THIS PROVIDES AN ENORMOUS SUBSIDY TO MILLS WHO BUY A LARGE PORTION OF THEIR TIMBER IN NATIONAL FORESTS. IN OUR BEARDEN MILL FOR INSTANCE (OUTSIDE THE NATIONAL FOREST)A ONE YEAR SUPPLY OF TIMBER, 25,000,000 FEET WITH 75% PAID IN ADVANCE WOULD HAVE A COST TO US OF ABOUT $5,625,000. DEBT SERVICE ON THAT FIGURE AT TODAY'S PRIME COMES TO $956,000 PER YEAR. A COMPANY OF SIMILAR SIZE OPERATING IN THE NATIONAL FOREST WOULD HAVE ONLY $281,250 INVESTED IN THEIR 1 YEAR SUPPLY, AND THEREFORE IS LIKELY TO HAVE A MUCH LONGER TERM SUPPLY ON HAND. THIS IN ITSELF ENCOURAGES SPECULATION, FOR MILLS ARE BUYING TIMBER CURRENTLY FOR CONVERSION YEARS IN THE FUTURE WITHOUT HAVING TO MAKE ANY SIGNIFICANT CASH COMMITMENT.

A NUMBER OF POINTS HAVE RECENTLY BEEN PROPOSED BY THE FOREST SERVICE TO IMPROVE THE SITUATION. HOWEVER, THE IMPROVEMENTS ARE SO BLAND AND SO INOFFENSIVE I DO NOT BELIEVE THAT THEY WILL ACCOMPLISH THE DESIRED GOALS.

THANK YOU GENTLEMEN FOR YOUR ATTENTION. I APPRECIATE YOU COMING ALL THE WAY TO ARKANSAS TO HEAR THESE COMMENTS.

JOHN E. ANTHONY

SBA HEARING

MY NAME IS JOHN E. ANTHONY AND I AM PRESIDENT OF ANTHONY TIMBERLANDS, INC. WITH HOME OFFICES IN BEARDEN, ARKANSAS. WE ARE A PRIVATELY OWNED AND INDEPENDENT LUMBER MANUFACTURING FIRM OPERATING SAWMILLS IN ARKANSAS. since 1906.

WE PURCHASE SOME TIMBER IN THE OUACHITA NATIONAL FOREST, AND I HAVE BEEN ASKED TO COMMENT ON THE NEED FOR THE SMALL BUSINESS SET ASIDES AND TO OFFER SUGGESTIONS ON HOW TO IMPROVE THE PROGRAM. I BELIEVE THESE SET ASIDE SALES ARE IMPORTANT TO THE CONTINUED EXISTENCE OF INDEPENDENT LUMBER MANUFACTURERS. WITHOUT SOME SOURCE OF TIMBER TO THE EXCLUSION OF THE MAJOR CORPORATIONS, IT IS ONLY A MATTER OF TIME BEFORE THE INDEPENDENT COMPANY WILL CEASE TO EXIST.

IT'S NOT PRACTICAL TO GET INTO ANY MANUFACTURING BUSINESS WITHOUT AN ASSURANCE OF A RAW MATERIAL SUPPLY. IN MOST AREAS OF THE SOUTH, FOR A LONG PERIOD OF TIME RAW MATERIAL WAS AVAILABLE TO LUMBER MANUFACTURERS FROM INDEPENDENT LANDOWNERS. BUT AS TIME HAS PASSED, LARGELY DUE TO FEDERAL POLICIES, INDIVIDUALS AND FAMILIES WHO HAVE ACCUMULATED SUBSTANTIAL BLOCKS OF TIMBERLAND HAVE FOUND IT NECESSARY TO DISPOSE OF THEM IN ORDER TO PLAN ESTATES AND PAY TAXES. THE MARKET FOR THESE LANDS HAS ALMOST ALWAYS BEEN THE MAJOR CORPORATION. AS A RESULT, INDIVIDUAL LAND HOLDINGS HAVE DIMINISHED TO THE POINT THAT IN MANY AREAS AN INDEPENDENT MILL CAN NO LONGER BE ASSURED OF AN ADEQUATE SUPPLY OF RAW MATERIAL FROM THIS SOURCE, AND THEREFORE CAN NEITHER BUILD NEW PLANTS OR EXPAND OR MODERNIZE EXISTING FACILITIES. WITHOUT CONTINUED MODERNIZATION, A PLANT'S FUTURE IS ENTIRELY PREDICTABLE.

SIMULTANEOUS TO THIS REDUCTION IN PRIVATE LAND OWNERSHIP HAS BEEN THE EXPANSION, CONSTRUCTION AND MODERNIZATION OF PLANTS BY MAJOR CORPORATIONS WHO ARE ALSO COMPETITORS, AND STIFF ONES, FOR THE REMAINING PRIVATELY OWNED TIMBER. IN AREAS WHERE MAJOR CORPORATIONS OWN SUBSTANTIAL BLOCKS OF TIMBERLAND, BUT HAVE PLANTS TOO LARGE FOR THESE LANDS TO SUPPORT, A PERCENTAGE OF "OUTSIDE" STUMPAGE MUST BE ACQUIRED FOR THEIR PLANTS TO OPERATE EFFICIENTLY.

IN MANY INSTANCES THESE COMPANIES HAVE OWNED THEIR LANDS FOR MANY YEARS, AND HAVE A VERY LOW COST BASIS IN THE LAND AND TIMBER. IN THESE CASES, THE COST OF OUTSIDE STUMPAGE IS NOT SIGNIFICANT REGARDLESS OF ITS PRICE, SINCE IT IS ONLY A SMALL PERCENTAGE OF THE PLANT'S TOTAL REQUIREMENT. AS A RESULT, THE PRIVATELY HELD TIMBER ON THE OPEN MARKET IS FREQUENTLY BID UP TO SUCH LEVELS THAT ITS CONVERSION IS UNPROFITABLE TO EVEN THE MOST EFFICIENT PLANT. IF COMPANY "A", A MAJOR LANDOWNER, NEEDS 50,000,000 BF OF STUMPAGE FOR ITS PLANT AND SUPPLIES 40,000,000 OF IT FROM ITS OWN TIMBERLAND HOLDINGS, IT CAN AFFORD TO PAY VERY HIGH PRICES FROM THE REMAINING 10,000,000 FEET. CONVERSELY, IF INDEPENDENT COMPANY "B", WHO DOES NOT HAVE A LAND BASE, BUT NEEDS 20,000,000 FEET OF STUMPAGE, ALL OF SHICH MUST BE ACQUIRED ON THE OUTSIDE, YOU CAN READILY SEE THAT THE HIGH COST OF THIS MATERIAL CAN BE MADE UNPROFITABLE TO THE EXTENT THAT THIS COMPANY IS FORCED OUT OF BUSINESS.

IN MANY INSTANCES, THE SAVIOUR OF COMPANY "B" IS THE SMALL BUSINESS SET ASIDE SALE. HOWEVER, AS YOU KNOW, THESE SALES ARE LIMITED TO COMPANIES WITH 500 OR FEWER EMPLOYEES. THIS WAS A REALISTIC FIGURE IN EARLIER TIMES WHEN SMALLER PLANTS WERE ADEQUATELY EFFICIENT TO BE COMPETITIVE. HOWEVER, AS THE INDUSTRY

HAS CONSOLIDATED AND PLANT SIZES HAVE INCREASED FOR EFFICIENCY, MANY PROGRESSIVE, PRIVATE AND INDEPENDENT COMPANIES FIND THEMSELVES EXCLUDED FROM THESE SALES DUE TO SIZE. THESE COMPANIES HAVE FOUND IT NECESSARY TO INCREASE THEIR SIZE IN ORDER TO BE EFFICIENT IN THE UTILIZATION OF STUMPAGE AND TO BE COMPETITIVE IN THE STUMPAGE MARKET.

REGARDLESS OF A MILL'S LOCATION IN THE COUNTRY, IT IS NOT LIKELY THAT A SUFFICIENT VOLUME OF SMALL BUSINESS SET ASIDE TIMBER WILL BE AVAILABLE TO SUPPLY THAT PLANT'S TOTAL NEEDS. THEREFORE, THE SMALLER INDEPENDENT PLANT MUST BE COMPETIVE WITH THE MUCH LARGER CORPORATE PLANT FOR STUMPAGE ON THE OPEN MARKET.

IN OUR COMPANY'S CASE, AS OUR PLANTS HAVE GROWN AND BECOME MORE EFFICIENT, WE HAVE PASSED THE MAGIC NUMBER OF 500 EMPLOYEES. IN 1979 WE WERE INVOLVED IN A SIZE DETERMINATION PROCEEDINGS AND FOUND TO HAVE IN EXCESS OF 500 EMPLOYEES (560 TO BE EXACT). WE ARE NOW EXCLUDED FROM SMALL BUSINESS SET ASIDE SALES. AS A RESULT OF THIS DETERMINATION, (WHICH WAS RATHER COMPLICATED), AND OTHER ECONOMIC FACTORS, WE HAVE SINCE CLOSED THE PLANT WHICH HAD BEEN PURCHASING THE MAJORITY OF THESE SMALL BUSINESS SALES. WE ARE NOW CONSIDERED "BIG BUSINESS", IN THE SAME CLASS WITH OUR MAJOR CORPORATE COMPETITORS. HERE IS ANTHONY TIMBERLANDS, INC. WITH 560 EMPLOYEES AND SALES OF $40,000,000. OUR THREE MAJOR COMPETITORS HAVE 40,000, 46,000 AND 51,000 EMPLOYEES, AND 1978 SALES OF $4,400,000,000; $3,800,000,000; AND $4,145,000,000 RESPECTIVELY.

THE REASONS FOR OUR INCREASE IN SIZE CAN BE EASILY EXPLAINED. IN RECENT YEARS, THE NEED FOR THE UTILIZATION OF WASTE BY-PRODUCTS

AS AN ENERGY SOURCE HAS BECOME VERY IMPORTANT. WHOLE DEPARTMENTS HAVE BEEN FORMED FOR THE GENERATION OF STEAM AND ELECTRICITY TO PROVIDE POWER. WHEREAS IN 1950 A LUMBER MILL MADE ONLY LUMBER, NOISE AND SMOKE, TODAY'S PLANT MIGHT PRODUCE LUMBER, WOOD FLOUR, CHIPS, PALLETS, POLES, PILING, REELS, FLOORING, LAMINATED BEAMS, AND OTHER ITEMS, NOT TO MENTION THE POSSIBILITY OF PLYWOOD, VENEER AND STUDS ALONG WITH ENERGY. THE UTILIZATION OF THE TREE HAS BECOME MUCH MORE SOPHISTICATED AND THE COST OF PLANTS HAS BECOME MUCH MORE SUBSTANTIAL. WHEREAS in 1950 THE AVERAGE COUNTRY SAWMILL MIGHT MAKE 10 or 12,000,000 BF OF LUMBER PER YEAR, THIS SAME AVERAGE SAWMILL NOW PRODUCES 30 to 40,000,000 BF OF LUMBER PER YEAR. MOST PLANTS NOW REACH OUT MUCH FURTHER FOR RAW MATERIAL.

WHEREAS IN THE OLD DAYS A SAWMILL MIGHT CONSIST OF A CARRIAGE, A SAW, AN EDGER AND A TRIMMER, TODAY'S SAWMILL IS COMPRISED OF A MERCHANDISER COMPLEX, CUT UP DECK SYSTEMS, DEBARKERS, BAND MILLS, CHIP-N-SAWS, REMANUFACTURING EDGERS, SOPHISTICATED TRIMMING AND SORTING MECHANISMS, AUTOMATIC STACKERS, DRY KILNS, PLANER MILLS WITH TRAY SORTERS ALONG WITH A COMPLIMENT OF MECHANICS, ELECTRICIANS, MACHINISTS, WELDERS AND COMPUTER TYPES TO MAINTAIN AND OPERATE THESE PLANTS.

FURTHER, CONTRARY TO EARLIER TIMES WHERE THE ONLY BOOKKEEPER WAS THE MANAGER WITH A TIME BOOK IN HIS POCKET, TODAY'S COMPUTERIZED PLANTS REQUIRE ELABORATE, WELL STAFFED OFFICES, NOT TO MENTION THE SUBSTANTIAL NUMBER OF EMPLOYEES IN THAT OFFICE WHOSE SOLE FUNCTION IS TO COMPLY WITH IRS AND OTHER FEDERAL RECORD KEEPING REGULATIONS.

OUTSIDE THE PLANT, A SMALL ARMY OF LOGGERS IS NECESSARY TO SUPPLY THE NEEDS OF THE AVERAGE PLANT OF TODAY. THIS REQUIRES AN ELABORATE FORESTRY ORGANIZATION, FOR LOGGING SUPERVISORS ION, AND TIMBER PROCUREMENT.

WHICH POINTS UP ONE OF THE PROBLEMS WITH TODAY'S SMALL BUSINESS DETERMINATION PROCEEDINGS. SOME COMPANIES ARE VERY CAREFUL TO INSURE THAT NO LOGGERS ARE FOUND ON THEIR PAYROLL, GOING TO GREAT LENGTH TO MAKE THEM ALL "INDEPENDENT". AS A RESULT, THEIR NUMBER OF "EMPLOYEES" IS SMALL. OTHER COMPANIES FIND IT NECESSARY (IN ORDER TO COMPLY WITH MANY FEDERAL LAWS, WAGE AND HOUR RULES, WORKER'S COMPENSATION AND SAFETY AND HEALTH STANDARDS) THAT LOGGERS BE A PART OF THE COMPANY'S WORK FORCE. SOME COMPANIES HAVE FOUND THEMSELVES EXCLUDED FROM THESE SMALL BUSINESS SET ASIDES SIMPLY DUE TO THEIR WISH TO ABIDE BY THE LAW AND TO INSURE THAT THE LOGGERS WHO SUPPLY THE RAW MATERIAL FOR THE PLANT ARE PROPERLY AND LEGALLY COVERED BY INSURANCE AND WAGE LAWS, OR TO MAKE AVAILABLE PENSION AND HEALTH CARE PLANS.

REDUCING THIS TO SIMPLE NUMBERS, THE TYPICAL MILL 20 YEARS AGO MIGHT HAVE 125 ON-PLANT EMPLOYEES SUPPORTED BY 100 LOGGERS FOR A TOTAL OF 225. TODAY'S PLANT, HOWEVER, WITH THE ADDITION OF THE FACILITIES NECESSARY FOR A PLANT TO EFFICIENTLY UTILIZE THE RAW MATERIAL RESOURCE, FINDS ITSELF WITH 300 EMPLOYEES WITH AN ADDITIONAL 250 TO 300 FORESTRY, SUPERVISORY AND LOGGING PERSONNEL. AS A RESULT, THIS EFFICIENT, PRIVATE-OWNED AND INDEPENDENT COMPANY IS SOMETIMES EXCLUDED FROM SMALL BUSINESS SET ASIDES.

FOR THESE REASONS, I RECOMMEND THAT SMALL BUSINESS SET ASIDES BE RETAINED IN THE SALE OF TIMBER FROM OUR NATIONAL FORESTS.

FURTHER, I BELIEVE CONSIDERATION SHOULD BE GIVEN TO AN INCREASE IN THE NUMBER A COMPANY MAY EMPLOY AND BE ELIGIBLE FOR BIDDING ON THESE SALES. I BELIEVE THE 500 EMPLOYEE LEVEL, WHILE APPRO-

PRIATE IN EARLIER TIMES, NO LONGER SERVES THE BEST INTEREST OF THE INDUSTRY NOR RESOURCE BEING PROCESSED. IT TAKES A BIG PLANT NOWADAYS TO TAKE A TREE AND PROPERLY UTILIZE IT. WE SHOULD NOT ENCOURAGE PLANTS TO BE DESIGNED AND OPERATED TO PROCESS THIS VALUABLE NATURAL RESOURCE IN ANY OTHER FASHION.

THANK YOU VERY MUCH FOR THE OPPORTUNITY TO MAKE THESE COMMENTS.

Senator **Bumpers**. Thank you. You've put on an interesting distinction between the way private timber is sold and the way the forest timber is sold. I certainly wouldn't suggest that we try to emulate private sales, because they are two different entities. But I do think that we simply have to get a speculator, who is obviously driving the price up, and constantly driving a lot of people out of business. The people I know in business, for a lot of business, is awfully lethargic right now. It's slow in terms of the housing industry and so on. But the mills that I have talked to who are shutting down, that's not their problem. Some of them—one told me it was just his energy costs. His energy was just too high. But another one said that he could sell what he made, but he can't afford to buy on the stump logs when he has to sell the mill logs for less than he paid for them on the stump. And they feel that the speculators are driving these prices up, and there is unfair competition there. And you, I think, have pointedly pointed out that as long as there is nothing to lose, no business incentive not to bid, this practice will continue. And it seems to me that that's one of the things that we simply have to redress.

Mr. **Anthony**. Well, I'm concerned that this industry in a few years, unless there is some closer bringing together of practices, the only small business lumber mills there will be, will be those in the national forests. But it won't be simply because business is bad, it will be simply because the mills in the national forest have driven all the small mills out of the national forest out of business as a result of the advantage they have in buying Forest Service timber.

As I have suggested to you previously many times, it seems to be the solution is, is to bring those practices somewhat closer together. I can see no good cause for the U.S. Forest Service to sell its timber with terms that are significantly different from the terms across the South in the industry. Especially in the South where in most areas the national forests are not the dominant timber suppliers that they are in the West. And I think some consideration ought to be given that.

Senator **Bumpers**. Thank you very much for coming and thank you for your testimony. I want to thank all the witnesses for their efforts in preparing their statements. This has been a very enlightening hearing for me. Senator Pryor said before he left that he learned more this morning than he's learned in a long time about this business. And he was really sorry that he had to leave. But I want to thank all of you for coming. I think it's been helpful, and I think you will see some changes made. We have a lot of big timber business in our State. And they are good corporate citizens and they also provide a lot of employment for people who need work, International Paper, Weyerhaeuser, Georgia-Pacific, Potlach. They are all prime citizens. And what we're trying to do—what I hope we can do, of course, is to revise the rules so that this is fair for everybody.

In the back of my mind, I'd have to sit down and probably try to write it out, but I think I could formulate some rule changes that would address some of the problems that Mr. Dellinger and Mr. Teague talked about, as well as though that Mr. Cox and Mr. Rodgers and so on mentioned.

Well, with that, is there anything that anyone wants to just get off their chest?

STATEMENT OF BOB DAVIS, SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION

Mr. DAVIS. Yes; I'm Bob Davis with the Southeastern Lumber Manufacturers Association, and we represent approximately 400 small business manufacturers in Forest Service Region 8. Approximately a year ago, we met with Senator Boren of Oklahoma, and he asked us to put together a position paper of our members on the 30/70 rule. We have done this and it has been submitted to the SBA.

Senator BUMPERS. When did you submit that?

Mr. DAVIS. Three months ago. We have our procedures that we go through. We operate with subcommittees and committees and we have our president and our executive vice president, and then we have our procedures which we have to go through to formulate position papers. We did this and the SLMA did reach a consensus of these member mills that do purchase from the national forest in region 8, and that position was that these members would be for changing the 30/70 rule, so that 100 percent of all the timber in a designated set-aside sale would have to be processed by a small business manufacturer.

Senator BUMPERS. I appreciate that. And I think if we could do that, and as I say—I don't know what your organization would say about, for example, even reducing the set-aside, at least in some forests where there isn't a demand by small operators, reduce that set-aside and remove the 30-percent rule. And that would also remove the incentive for larger firms to—well, I think there is certainly—sort of covert encouragement of speculators and so on, because the large firms need the timber desperately, and because of the set-aside they can't meet their needs. We addressed their problem also. This is a Small Business Committee. We're really trying to protect small business but in the process, we can't be unmindful of everybody's interest.

Mr. DAVIS. We've been told by word of mouth and by letter from this particular forest, that small business cannot contain the timber that is already there. Our contention is——

Senator BUMPERS. You use the word contain, I'm not sure what you mean by that?

Mr. DAVIS. Utilize the timber that is there. Our contention is that we're really fearful of tampering with the percentages, the historic share as it sets up the percentages, because we don't know what it will do to other regions. And the only thing we're concerned with with the the 30/70 rule, is region 8. We don't have a case list for other regions. We are interested only in region 8 because this is where we operate. Other regions have their own problems, and other regions are not for this.

Senator BUMPERS. I have your report here and I'll read it on the way back to Little Rock. With that, we'll stand adjourned.

[Whereupon, the hearing was adjourned at 1 p.m.]

APPENDIX

STATEMENT OF

THOMAS F. MITCHELL
VICE-PRESIDENT
GEORGIA-PACIFIC CORPORATION

Submitted to the
UNITED STATES SENATE COMMITTEE ON SMALL BUSINESS

This statement is submitted for inclusion in the record of hearings held by the Committee in Hot Springs, Arkansas on February 19, 1982. The subject of the hearings was the small business set aside program for federal timber administered by the United States Forest Service.

The Georgia-Pacific Corporation has its origin as a small lumber company, founded in Augusta, Georgia in 1927, with only a handful of employees. In the years since 1927, competition in the wood products industry has been intense. The marketplace has demanded that companies be productive, efficient, and otherwise well managed in order to survive. Yet, our company and other small companies have not only survived, they have grown. Significantly, this growth has occurred without the benefit of programs such as the small business set aside program for federal timber.

Since passage of the original Small Business Act in 1953, the effect of the marketplace has been blunted, and many companies, not necessarily small firms, have been given substantial subsidies through programs such as the federal timber set aside program. Today, our country is reaping the punishing rewards of these programs, programs which often compensate inefficiency, result in higher prices to consumers, and decrease the competitiveness of United States products in domestic and world markets.

Our experience with the small business set aside program for federal timber indicates that set aside sales are generally of higher quality and are less costly to operate than are so-called open sales. In addition, set aside sales usually sell at lower prices than do open sales. Thus, the set aside program extends subsidies to many firms including some which can only be described as large, established companies.

The size standard set by the Small Business Administration for participation in the set aside program permits companies with up to 500 employees to bid on set aside sales. As a result, many companies are extended what amounts to a permanent preference in the purchase of federal timber. We question whether companies with as many as 500 employees are the "small" companies which Congress targeted for assistance when it passed the Small Business Act. Moreover, we question the extent to which truly small companies are enjoying the intended benefits of the set aside program. A 1979 report by the General Accounting Office entitled "Allegations Regarding Small Business Set-Aside Program for Federal Timber Sales," CED-79-8, April 5, 1979, found, for example, that companies with fewer than 100 employees have benefited less from the program than have larger companies.

The direct impact of the timber set aside program on Georgia-Pacific and other companies ineligible for the program has been significant. First, we find ourselves eligible to bid on a generally static or decreasing share of federal timber. Second, the timber which is offered in open sales is often the subject of what would appear to be speculative bidding. This latter problem is probably exacerbated by the lack of a bid deposit requirement for small businesses.

One focus of the February 19 hearing was the prohibition in the current set aside program against the resale of more than 30 percent of a set aside sale to businesses not classified as small. We would observe that permitting small firms to sell 30 percent of the timber which they purchase in set aside sales to large firms appears to have encouraged speculative bidding by some "small" firms. Although it is sometimes advantageous for large firms to buy a portion of set aside sales, in order to reduce speculation in federal timber Georgia-Pacific would support changing the current program to require that all set aside timber be sold to or manufactured by small business firms.

Our experience with the set aside program and the conclusions which we have drawn from that experience are consistent with the 1979 GAO report cited above and a recent study entitled "The Effectiveness of Competition and Appraisals in the Auction Markets for National Forest Timber in the Pacific Northwest" by Walter J. Mead, Mark Schneipp and Richard B. Watson, September 30, 1981. While we do not now call for the elimination of the small business set aside program, we do believe that the program is in urgent need of revision. We stand ready to work with the Forest Service, the Small Business Administration, and, if necessary, the Congress to identify and implement measures to address the problems which have arisen under the current set aside program.

March 2, 1982

Thomas F. Mitchell

STATEMENT OF JAMES M. WHITE, VICE PRESIDENT
OF DELTIC FARM & TIMBER CO., INC.
BEFORE THE
SMALL BUSINESS COMMITTEE
UNITED STATES SENATE
HEARINGS ON NATIONAL FOREST SET-ASIDE PROGRAM
HOT SPRINGS, ARKANSAS
MARCH 19, 1982

Deltic is an Arkansas corporation that has been engaged in forest management for over 30 years and in lumber manufacturing for 11 years. One of Deltic's two sawmill operations is at Ola, Arkansas, near the Ozark and Ouachita National Forests, and it is there that we have been subject to the Small Business Administration and its supervision of the Forest Service sales program.

While there are many aspects of the program I feel should be commented on, I want to limit my remarks today to one particular complaint, i.e. the encouragement for speculators. The program as originally agreed upon by the United States Forest Service and the Small Business Administration was apparently intended to assure that a small manufacturer would have an adequate supply of sawtimber for its operations. The competition that this small manufacturer was to experience was intended to come from other small manufacturers and not from a "large" competitor.

This well intended program has, in the last several years on the Ouachita National Forest, resulted in drawing speculator bidders into the marketplace declaring themselves small business. These non-processing bidders with dubious credentials as small businesses buy government timber under the protective umbrella of the Small Business Administration's control of Forest Service sales then resell the timber to whoever will pay them the highest price. It is virtually impossible to determine where the timber is processed and the net effect is that an unnecessary middleman makes an uncalled for profit at public expense. This speculator's risk is low because of low "down payment" requirements and extentions, recently granted, that further protect his exposure. The risk for selling the timber to whoever may choose to purchase it is low. By blending certain open sales with lower priced set-aside sales and using the 70-30 rule as an excuse to sell "part" of each set-aside timber sale, no valid way can be established to monitor the program.

I would recommend establishing a program based upon today's set-aside program but with sales only to bona fide processors with resale of sawtimber size material limited to emergency or special cases and only by Forest Service permission. This would assure competitive bidding, small community stability and competent timber harvesting. Small business mills would have an adequate raw material supply and the government would receive maximum revenues for sales not purchased by small business.

I thank the Committee for the opportunity to submit this statement.

STATEMENT

Submitted by

Willamette Industries, Inc.

Carroll Cochran
Ruston Area Manager
Logging and Woodlands

P. O. Drawer 1100
Ruston, Louisiana 71270
318/255-6268

February 18, 1982

Senate Small Business Committee Hearing
Hot Springs, Arkansas

Gentlemen:

Willamette Industries, Incorporated is a newcomer to the state of Arkansas having recently completed construction on a multimillion dollar plywood and lumber plant at Emerson, Arkansas.

Since this is a new plant, Willamette has not bid or bought any sales on the Ouachita National Forest, and we are not that familiar with the operations on this particular forest. However, we have for the past fifteen years been very active on timber sales on the Kisatchie National Forest in Louisiana. Willamette has found from its past experience on SBA sales from this area that several of the regulations on SBA sales are uncontrollable and tend to lead to problems for the government.

The 70 - 30 split is a major problem and could eventually have complete loss of control. For example; in Louisiana most of the sales are multiple products sales (pulpwood and sawlogs). If a small business purchased a sale with multiple products (logs and wood) and hauled the trees to their concentration yard in log lengths or tree lengths these would be mixed with other logs or trees already on the yard. Once these products are mixed on the yards with timber from other tracts, they would lose their identity and could be sold to major business, and no one would be able to verify volume actually consumed by the purchaser.

This policy is not in the best interest of legitimate small business operations or major business, due to the possibility that someone with no capital investment and no manufacturing facility could turn a fast profit to someone that did not qualify to bid on the sale. Also, any policy that is made should be made so that enforcement is simple and can be controlled whereas, in this case, there is no way to enforce a multiple products sale.

The Small Business Administration should always keep one thing in mind when looking at any matter relating to small business or so-called major business and that is the fact that this country needs both big and small business to produce the greatest number of goods possible, with the largest number of employees on the payroll as possible -- produced at the cheapest price possible for the benefit of the consumer.

We believe that most small businesses are very efficiently operated and do not need any special treatment by the government (tax payers) to run their business. If the SBA program is a subsidy to inefficiency (which we believe it is) should the tax payers continue to lose revenue from National Forest Products Sales? There is no way that inefficiency should be supported by any tax payer's money, regardless of the number of employees on the payroll. Regardless of size, the small and the large business is owned by a group of individual investors (with the only difference being a greater number in the so-called "major"), who are all, tax payers and common working people trying to make ends meet, in a country that seems to have forgotten that it is not a sin to make a profit or to work.

Listed below are examples of total sale programs for the Kisatchie National Forest from the years 1978 and 1979:

1978 Forest Service Sales (Louisiana)

Total Sales - 66,425,000 bd. ft. Scribner Scale

Purchased by SBA - 35,926,000 or 54% (included in this is 11,388,000 from major sales)

Purchased by majors - 30,499,000 or 46%

Average price for SBA sales- $ 183.31 (Scribner)

Average price for Majors - $ 212.37 (Scribner)

Price Difference - $ 29.06 (Scribner)

1979 Forest Service Sales (Louisiana)

Total Sales - 68,402,000 bd ft. Scribner Scale

Purchased by SBA - 38,964,000 or 56% (included in this is 16,410,000 from major sales)

Purchased by major - 29,438,000 or 43.1%

Average Price SBA - $ 240.01

Average Price Major - $ 262.37

Price Difference - $ 22.36

Weyerhaeuser Company

P.O. Box 1060
Hot Springs, Arkansas 71901

March 4, 1982

Mr. Alan Chvotkin
Minority Counsel. Senate
Small Business Committee
424 Russell Senate Office Bldg.
Washington, D. C. 20510

Dear Mr. Chvotkin:

A Weyerhaeuser Company representative attended the recent oversight hearing for the Senate's Small Business Committee held in Hot Springs, Arkansas, February 19, 1982. We wish to present for the record our position on the key areas covered concerning the Timber Set-Aside Program.

We are in agreement with the recommendation made by the SBA mill owners panel and Senator Bumpers which proposed that:

a. 100% of the sawtimber volume in a set-aside sale be used by SBA mills, except when grade and/or species are not usable in the SBA converting units.

b. Along with the 100% usage change there be a reduction in the percentage of total volume sold as set-aside sales.

This change should re-direct the set-aside program so that it more nearly accomplishes its original purpose.

We have also reviewed the concern about pulpwood volume being sold along with sawtimber in the set-aside and open sales. This issue raised by Arkansas Kraft in our view is valid and we would support a change which resulted in a separate sale of pulpwood only units.

We also believe that the issue of number of employees allowed in a Small Business should be reviewed once again to determine if 500 employees is an appropriate definition of a Small Business in the forest products industry.

Sincerely,

L. E. Endicott

L. E. Endicott
Vice President
Arkansas Region

/mf

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Ch. II

National Forest Timber Sales; New Timber Sale Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy.

SUMMARY: This proposal would revise agency procedures relating to new timber sales. The primary purposes of the new procedures are to encourage a regular flow into the market place of products manufactured from National Forest timber, to provide a corresponding flow of timber sale receipts to the United States and local governments, to help ensure financial responsibility of bidders, to encourage purchasers of Forest Service timber sales to harvest timber early in the contract term, and to reduce the need for future extensions of timber contracts.

Federal Regulations at 36 CFR Part 223 set forth rules and regulations for sale and disposal of timber from National Forests. Timber sale policies and procedures stated in Forest Service Manual 2400 implement those rules and regulations. The revised procedures here proposed will not impact on nor affect the quality of the human environment, do not involve environmental amenities and values, nor do they involve alternative uses of available resources. Therefore, the proposed revisions to timber sale contract procedures here described are outside the requirements of the National Environmental Policy Act (Forest Service Manual 1951.2 (46 FR 56998, November 19, 1981)).

DATES: Comments must be received by March 8, 1982.

ADDRESSES: Send written comments to: R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Emil M. Sabol, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 447-4051.

All written submissions made pursuant to this notice will be available for public inspection during regular business hours in: Director, Timber Management Staff, South Agriculture Building, Room 3207, 12th and Independence Avenue, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: America's housing market serves as the source of the primary demand for softwood products—chiefly lumber and plywood. Major producing areas in this country are the Pacific Coast, the Intermountain West, and the Southeastern United States. Canada is also a major producer of wood products for American housing. In the last 20 years annual housing starts have varied between 1.1 million and 2.4 million. Softwood lumber and plywood prices have declined during each low point of the market. Producers have reduced output or shutdown operations. Past cycles were of short duration and the marginal producers were usually able to recover and resume production.

The current downturn in housing starts has been much deeper and of longer duration. Hundreds of mills are closed or are on reduced production schedules. Many western producers are dependent in whole or in part on National Forests as their source of timber supply. For many years the Forest Service has been selling timber to individuals or companies who convert the standing timber to logs and then into lumber or plywood. Each sale transaction begins with an advertised timber offering at an appraised fair market value. Prospective purchasers may bid with the high bid being the winner. Timber sales vary in value from a few thousand dollars to several million dollars. Each sale is formalized by execution of a contract between the purchaser and the Forest Service. The contract details the explicit terms and provisions of the sale including volume, price, period of removal, and requirements for road construction (if required), logging, and environmental protection measures to be taken. The average contract period is about 3 years. Many sales are 1 or 2 year contracts, and a few are for as long as 7 or 8 years duration. Average sale length in the West is about 3 and ½ years.

Intense competition in some geographic areas for Forest Service sales in recent years has caused bid prices to exceed by two or three times the advertised stumpage rates. For example, there is currently 11.266 billion board feet of timber under contract on National Forests in western Oregon and Washington at an average price of $295 per thousand board feet log scale.

In the face of low demand, decreased product prices and severe competition from Canadian lumber, many purchasers have been unable to operate the sale contracts. In a normal situation an uncompleted sale contract would go into default. The purchaser would be liable for the difference between the contract price and the resale price of the defaulted timber. The spectre of a large number of potential defaults followed by bankruptcies with all of the consequent disruptive effects to employment and the economy in forested regions of the country caused the Forest Service in October 1981 to permit, upon request, extensions of existing timber sale contracts even though specified conditions for extension had not been met.

Many purchasers on the Pacific Coast would be more competitive in the domestic lumber and plywood market if their stumpage costs were closer to the originally appraised price of sales now under contract. There are a number of reasons why prices bid for public timber, especially on the Pacific Coast, are high. Two principal causes have been a combination of the purchaser's expectations of a high level of housing starts (strong demand) and an expectation of continued high inflation rates (high price). These expectations caused some purchasers to bid extremely high rates for longer term sales of 4, 5, or 6 years. This timber is not economical for harvest now. The consequences have been numerous: mill closings, high unemployment, potential bankruptcies and a significant reduction in stumpage receipts to the Federal and County Governments. Many western counties depend heavily on their 25 percent payment of receipts for operation of schools and roads.

Current Forest Service bidding and contracting procedures have been geared to former modest levels of bidding competition. They do not offer the necessary economic incentives for prompt and orderly harvest of timber under market conditions that have existed during the past few years. Current and expected conditions make it necessary to alter these procedures. In

October, the Forest Service developed objectives, criteria, and a list of possible changes to contract procedures. This information has been made available to timber purchasers, County and State officials, and other interested individuals. Meetings and work sessions have been held. In December, Forest Service Chief Peterson sent three of his timber staff West personally to confer with timber purchasers, County and State officials, and others in four States. Approximately 450 producers plus State and County officials were contacted.

Criteria used to judge the effectiveness of the changes now being proposed are: Will the changes tend to temper extreme bid levels for future sales? Is the change consistent with practices already being used by other sellers of timber? Will the new practice help to provide a more even flow of receipts to the Federal Treasury and to County Governments? Is the action reasonably equitable to a wide spectrum of National Forest timber purchasers? Will the actions aid the orderly production of forest products to the benefit of American consumers?

It is anticipated that the changes will result in a reduction in prices bid for National Forest timber in highly competitive areas, principally along the Pacific Coast. At the same time, however, actual revenues from the harvest of this timber are expected both to stabilize and to be received earlier because timber will be economical for operation over more of the business cycle. The ability to compete with imported wood products will be enhanced.

Numerous suggestions for modifying timber sale policies other than those here being formally proposed have been considered, among them being (1) not to award slaes to purchasers who already have excessive timber volume under contract, (2) requiring that bidding be on a present net worth value on timber sales in highly competitive areas, (3) discontinuing the sometime use of performance bonds as payment guarantees, (4) imposing rigid harvest or payment schedules through the term of the contract, (5) requiring advance cash payments in considerably larger amounts, (6) the development of a market related contract term adjustment provision, (7) discontinuing the use of stumpage rate adjustment sales, (8) disqualifying defaulters, whose obligation is not being contested and who have not paid their obligation, from bidding on National Forest timber sales, and (9) maintaining the present policies without change.

In addition to the proposed changes in timber sale procedures, positive measures to reduce the averge length of contract terms by reducing the average amount of volume subject to individual sales will be taken by Regional Foresters. Efforts will be made to offer sales of varying volumes and length of term, however. Regional Foresters will issue guidelines to accomplish these objectives, including monitoring sale size and length.

We believe that the policy changes here being proposed for new sales will accomplish the necessary objectives, and that other measures and requirements are not necessary at this time. The Forest Service will continue to monitor the timber sale program to determine the effects of whatever new procedures ultimately are implemented. Conditions will be evaluated as of April 1, 1983, and April 1, 1984, to determine the effectiveness of such new procedures. If additional policy changes are needed in the future to meet the objectives stated in the summary of this notice, other procedures will be developed and announced for public comment. Future consideration will be given to (1) increasing the cash deposit required at time of contract award, (2) increasing the percentage of payment required at contract midpoint, (3) holding some cash until final harvest, and (4) adoption of a market related contract term adjustment provision.

The following numbered items describe the specific changes now being proposed:

1. The basis for calculating the amount of the bid guarantee required of prospective bidders on a Forest Service timber sale contract shall be 5 percent of the advertised value of the contract.

Explanation

Current policy is for the bid guarantee to equal the advertised value of 1 month's cut. Thus, the total advertised value is divided by the total number of normal operating months in the sale contract. The current method of calculating the bid guarantee, therefore, requires a greater proportionate share of the advertised value as a bid guarantee for shorter term sales than for longer term sales.

The proposal will make the percentage of bid guarantee to advertised value equal for all sales FSM 2431.5).

2. The high bidder will be required, as a condition of being awarded the sale, to replace the bid guarantee with cash in the amount of 5 percent of the bid price within 10 business days after bid date. A performenace bond must still be provided before the contract is consummated. The cash deposit may be used in payment for the first timber removed from the sale after all purchaser credit to be earned on the sale has been earned and utilized or, if no purchaser credit is provided for, after 25 percent of the advertised volume is presented for scaling. Purchaser credit earned on the sale may be transferred to and utilized on another sale or sales on the same National Forest held by the purchaser. Purchaser credit earned on another sale may not, however, be used in lieu of the cash deposit.

Explanation

Currently, the bid guarantee is replaced by a performance bond at time of contract signing with no cash deposit being required. During the summer of 1980, the policy of replacing the bid guarantee with cash or securities was dropped. Consideration has now been given to suggestions for cash deposits in varying percentages of appraised or bid rates, and to the time and manner in which cash deposits could be used for payment of timber. The proposal here presented is the result of that consideration (FSM 2431.7)

3. The maximum performance bond to be required on a Forest Service timber sale contract will be $500,000.

Explanation

The present maximum performance bond is $200,000. The increased maximum is needed to protect the Government from possible damages arising from nonperformance. Higher timber prices make the increase desirable. Review of this issue included consideration of a range of different maximum bond amounts, including retaining the present maximum amount (FSM 2432.4).

4. To qualify as a bidder of National Forest timber sales, proof of ability to furnish a performance bond or other performance guarantee will be required for sales of more than $10,000 of advertised value. Regional Foresters may include this requirement for sales less than $10,000, if they deem it to be necessary for adequate protection of the Government's interests.

Explanation

Present policy requires the successful bidder to furnish a performance bond or other performance instrument at time of signing the contract, rather than at time of bidding. This practice has allowed bidders who may not be able to furnish a performance guarantee to participate in the bidding process, and to influence the final price. It also has delayed operations of sales when the high bidder cannot meet the contract requirements for performance guarantee, and has sometimes resulted in readvertising of the timber sale, all to the expense and inconvenience of the Government and other bidders (FSM 2432.5).

5. Purchasers who have defaulted a National Forest timber sale must reestablish financial and performance qualifications prior to bidding on National Forest timber sales. The bidder will have to submit a satisfactory showing of financial ability and a showing that the bidder has, or can obtain, equipment and supplies suitable for logging the timber and for meeting the resource protection provisions of the contract.

Explanation

Currently, a firm or individual who defaults on a timber sale may immediately bid on subsequent sales. A substantial risk occurs in such instances of a disruption of the orderly marketing of timber. Such action may put other bidders at a disadvantage.

This procedure will require purchasers who have defaulted contract requirements on prior National Forest timber sales to demonstrate that they are able to fulfill the terms of the contract being bid upon (FSM 2431.5).

6. By the end of the normal operating season following the midpoint of any sale term of more than 3 years duration, the purchaser shall have paid the greater of either (1) 50 percent of the bid premium, calculated as of the date the sale was awarded, or (2) 25 percent of the anticipated contract price, calculated as of the date the sale was awarded. Purchaser credit from the sale, or from another sale or other sales on the same National Forest, may be used to meet this obligation.

Explanation

Various methods of payment schedules or other incentive systems were considered to provide orderly harvest while providing flexibility for the purchaser to meet market demands. Proposals considered were: Charging interest on the unpaid balance, present net worth bidding with payment schedule submitted by the purchaser at time of bid, and other fixed payment schedules during the life of sale (FSM 2451.4).

7. Timber sales for a term of more than 2 years will require monthly deposits during the final operating season. Each monthly deposit will be equal to the value of timber not paid for at the beginning of the final normal operating season divided by the number of months in the normal operating season. Only if all purchaser credit to be earned on the sale has been earned and utilized may purchase credit from another or other sales on the same National Forest be used to meet this obligation. Regional Foresters will have discretion to apply the requirement for monthly deposits to sales of 2 years or less, if, in their judgment, extreme levels of bidding are being experienced on a particular Forest.

Explanation

This proposal would provide incentive to the purchaser for diligent performance of the sale's requirements (FSM 2451.4).

8. For timber presented for scaling prior to the last year of the sale term, payment rates will be reduced by a factor based on the average rate being paid for borrowings by the United States (as calculated and published by the U.S. Treasury Department in TFRM 6–8020–20). This rate will be specified in the sale advertisement and will remain constant throughout the sale term. For timber presented for scaling during the last 12 months prior to sale termination date, no discount would be earned. For timber presented for scaling in the period 12 to 24 months prior to termination date the rate of payment will be reduced by a factor that is 50 percent of the annual interest rate for U.S. borrowings specified as described above; for timber presented for scaling in the period 24 to 36 months prior to termination date, the price will be reduced by a factor that is 150 percent of the annual interest of U.S. borrowings specified as described above; for timber presented for scaling in the period 36 to 48 months prior to the termination date, the rate of payment will be reduced by a factor that is 250 percent of the annual interest rate paid on U.S. borrowings specified as described above; a progressing schedule of reductions would be established for sales of longer term. However, in no case shall the rate of payment for flat rate sales be reduced below the advertised rates. In no case shall the rate of payment for stumpage rate adjustment sales be reduced below the advertised rates as adjusted to the current quarter by the market indices specified in the timber sale contract.

Explanation

Use of an incentive for early timber removal will encourage purchasers to harvest a sale as soon as possible and not delay for possible improvements in market conditions. The incentive will be equitable to the United States because it will be equivalent to the amount the Government would have had to pay to borrow the money (FSM 2451.4).

9. Stumpage rate adjustment shall be provided for in all National Forest timber sale contracts in western Oregon and Washington awarded after March 31, 1983.

Explanation

Stumpage rate adjustment is in effect in all areas in the western United States except for western Oregon and western Washington. Stumpage rate adjustment permits the price paid for National Forest timber to fluctuate, within stated limits, in response to established market indices. Stumpage rate adjustment allows prices paid for timber to be partially responsive to market conditions and promotes stability of production and employment by encouraging operation during the down portion of cycles in the market.

The delay in implementation will permit a suitable index to be developed and tested, and will presumably avoid imposing stumpage rate adjustment provisions at the bottom of the market (FSM 2451.3).

10. Contract term extensions obtainable under timber sale contracts hereafter awarded shall, in addition to prerequisites now provided for, require agreement by the purchaser (1) to pay in cash an amount equal to any costs caused by delay of harvest, including interest at the current rate being paid for borrowings by the United States (as calculated and published by the U.S. Treasury Department in TFRM 6–8020–20) on the value of timber remaining on the sale until such timber is paid for at contract rates, and (2) under contracts providing for stumpage rate adjustment, to pay for timber removed from the sale area during the period of extension at rates not subject to downward adjustment nor subject to any ceilings on upward rate adjustment. The procedure for establishing payment rates following a rate redetermination for contract term extensions shall be revised to preclude an increase in purchaser credit as part of the rate redetermination.

Explanation

The National Forest Management Act requires as prerequisites for the granting of extensions on sales longer than 2 years that the purchaser have diligently performed in accordance with an approved plan of operation, or that the substantial overriding public interest justifies the extension. Costs caused by delay of harvest will vary by individual timber sale; they may include items such as the cost of keeping planting stock an additional time, higher costs for planting the area due to delays, and consequences to other natural resources caused by prolonging timber sale operations (FSM 2433.1). The provision for payment of interest will reimburse for delay in receipt of stumpage payments and for delay in establishing growth on the regenerated stand.

The timber sale appraisal includes an estimate for costs of constructing specified roads. During inflationary periods, the costs of constructing roads often are higher at the time of extension than they were at the time of the original appraisal and sale. Under present practice, an increase in specified road costs and purchaser credit at time of extension results in a decrease in receipts to the Government. This proposal will eliminate that loss to the Government (FSM 2433.1).

11. Purchasers who default a timber sale contract will, in addition to liability for other damages currently specified in provision B9.4 of the timber sale contract, be liable (1) for any increase in costs attributable to originally specified roads at resale of the defaulted contract, and (2) for the Government's loss caused by delay in receipt of stumpage payments, measured by interest from the date the contract would have terminated had it not been defaulted, to the midpoint of the term of the resold contract. Such interest will be at the rate paid for borrowings by the United States (as calculated and published by the U.S. Treasury Department in TFRM 6-8020-20) during the period of delay.

Explanation

Presently, defaulting purchasers are assessed the cost of reselling the remaining timber plus the difference between the resale receipts and the receipts the Government would have received if the original purchaser had harvested the timber in a timely manner. Now, the defaulter will also be assessed interest on the value of the remaining timber. The cost of resale and the interest assessment will be specified as liquidated damages.

The timber sale appraisal includes an allowance for construction of specified roads. During inflationary periods, the costs of constructing the same roads would be higher at the time of default than they were at the time of the original appraisal and sale. Under present practice, an increase in specified costs and purchaser credit for the same roads at time of resale results in a decrease in receipts to the Government. This proposal requires the defaulting purchaser to be liable for this loss (FSM 2433.5).

Douglas R. Leisz,

Associate Chief.

December 31, 1981

[FR Doc. 82-1286 Filed 1-19-82; 8:45 am]

BILLING CODE 3410-11-M